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LET'S CURB THE COURT ANYWAY

Nearing a House vote this week are two bills aimed at clipping a couple of the Earl Warren Supreme Court's claws.

One measure would reverse the 1956 decision in Communist Steve Nelson's case — a decision which virtually everybody thought knocked out 42 states' anti-sedition laws. The other would modify a long-standing (16 years) Supreme Court ruling against overlong police questioning of suspects before arraignment.

Chief Justice Earl Warren

By a near-miraculous coincidence, the Warren court on Monday rendered a 5-4 decision upholding that the Steve Nelson thing did not, after all, strip the states of power to defend themselves against subversives.

For good measure, the Warren court handed down another 5-4 decision pulling back on the 1957 John T. Watkins ruling, which pretty well crippled the House Un-American Activities Committee's power to probe un-American activities.

Thus, the Warren court has shown some 20 times a desire to protect Communists, curtail states' self-defense powers, and hamstring Congressional investigating bodies. It has now shown two times a disinclination to do those things.

We think Congress had better pass at least the two bills abovementioned, plus a hatful of others to limit this court to interpreting laws instead of making laws. Why assume that the Warren court is mending its ways and will not, once the Congressional heat is off, snap back to its old pro-Red, anti-Congress and anti-states' rights habits?

62-27585-A
NOT RECORDED
170 JUN 19 1959

JUN 19 1959

The Washington Post and Times Herald
The Washington Daily News
The Evening Star
New York Herald Tribune
New York Journal-American
New York Mirror
New York Daily News 43
New York Post
The New York Times
The Worker
The New Leader
The Wall Street Journal
Date JUN 10 1959

0-19 (Rev. 1-20-59)

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[illegible] upheld the right of both Congress and the states to inquire into the Communist conspiracy. And in doing so, the Court also did some other things:

It made more apparent than ever the philosophical breach on the nation's highest bench.

It took the trouble to explain what it meant in two prior cases that touched on Congressional questioning and state control of subversion that had been decided the other way.

It reaffirmed some basic truths that seemed clouded, in the minds of the public and of Congress, by some of its earlier decisions touching on Communism.

And in doing all that, the Court gave its many defenders a chance to argue against its critics in Congress who would limit its jurisdiction.

In one decision, Justice Harlan held for the majority that a House Un-American Activities subcommittee did not act improperly in asking a former Vassar College instructor questions about the Communist Party. In the text of the decision, Justice Harlan took care to point out that the rule two years ago in the Watkins case—a decision that was widely regarded in Congress as unduly limiting its power to investigate—had no bearing in the case before it. In the other decision, Justice Clark wrote that the Nelson case, an earlier decision interpreted by some lawyers as knocking out state sedition laws, did not "strip the states of the right to protect themselves," and also had no bearing on the case before the Court.

The philosophical split becomes obvious when noses are counted on the two decisions: In both cases the same five judges upheld the investigatory powers of Congress and the states and [illegible]

[illegible] exposure for [illegible] it, we think, not unfair to conclude [illegible] the four dissenters were [illegible] that the Supreme Court was right the first time in the Nelson and Watkins cases and that the explanations of any difference were mere hair-splitting or worse. In any case, the four minority judges made plain that they believe the investigations both in Congress and in New Hampshire were [illegible] try [illegible] noses and punish them because they are or have been Communists.

That, however, overlooks some of the basic truths that Justice Harlan reaffirmed in his majority opinion. Of the right of Congress to investigate, he said, "The scope of the power of inquiry is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution." Such power, he reminded his dissenting brothers on the bench, must not be judged "on the basis of abstraction." Congress can investigate Communism wherever it is thought to be. No man can claim freedom from interrogation "merely because he is a teacher."

This sort of reasoning is, to be sure, somewhat different from some other decisions about Communism. It may be that, as Mr. Dooley said long ago, the Supreme Court reads the election returns and critical voices have suggested a closer look at the rights of Congress and the states. It may be, as others have suggested, that these particular decisions prove that there has been no pattern at all in the High Court's thinking.

But whatever the [illegible], these truths needed reaffirmation by the Supreme Court, no less as a reminder to itself as to the country at large.

The Washington Post and Times Herald
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New York Journal-American
New York Mirror
New York Daily News
New York Post
The New York Times
The Worker
The New Leader
The Wall Street Journal
Date JUN 10 1959

62-27585-A
NOT RECORDED
199 JUN 17 1959

58 JUN 19 1959

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Mr. DeLoach
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Mr. Mohr
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Trotter
Mr. W.C. Sullivan
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Mr. Holloman
Miss Gandy

SUPREME COURT

Anti-NAACP Laws in V[illegible]

[illegible] ruling as it did on Monday, that three of the five anti-NAACP laws in the "package" enacted by the General Assembly at the special session of 1956 should be tested first in state courts before the federal courts pass on their constitutionality, the Supreme Court upheld an old principle.

It was one that a three-judge federal court did not follow when in Richmond last year it examined the entire anti-NAACP package and found three of the five laws unconstitutional. Two of the five it called vague and recommended that they be interpreted by state courts. By 2 to 1 vote the court held the other three laws unconstitutional.

The three important pieces of anti-NAACP legislation held unconstitutional by the three-judge court required the NAACP to file membership lists, names of contributors and financial information. One of them redefined "barratry" as the offense of stirring up legislation." In setting aside the lower court judgment, the Supreme Court did

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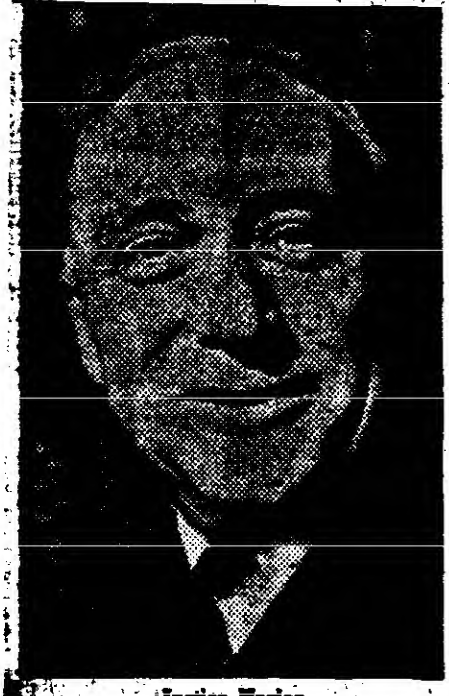
The majority opinion of the court,



Justice Harlan

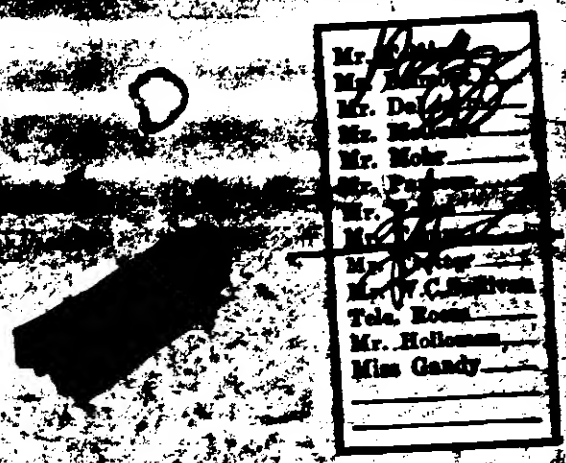
delivered by Associate Justice John M. Harlan referred to the fact that the Supreme Court has many times

applied the principle that federal courts should not adjudicate the constitutionality of state enactments fairly open to interpretation until the state courts have been afforded a reasonable opportunity to interpret them."

The Supreme Court, on June 25, 1957, upheld lower court rulings that Negro pupils seeking admission to a white school in Hoke County, Fort, N.C., could appeal to federal courts only after exhausting all administrative remedies provided by the state's pupil enrollment act. In that case, though under different circumstances, the Supreme Court applied the same principle.

The Supreme Court ruling in the case of Virginia's anti-NAACP laws was by a 6-3 vote. Justice William O. Douglas delivered a vigorous dissent. The NAACP went all out to win the case. Chief Justice Earl Warren sided with the minority. Though the ruling was neither precedent-shattering nor final, it did embarrass those extremists who refer to the Supreme Court as the "Warren court" and darkly hint, or openly assert, that it is the servant of the NAACP.

D.C.



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BASIL L. WALTERS, EDITOR
ARTHUR E. HALL, GENERAL MANAGER
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16 WEDNESDAY, JUNE 10, 1959

CRIPPLING EFFECT CANCELED

Supreme Court Restores Full Right to Probe Reds

Bapp

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Everett Norlander

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NOT RECORDED
167 JUN 25 1959

186

60 JUN 26 1959

[illegible] right of Congress to [illegible] subversive activity got [illegible] from the U.S. Supreme Court in its ruling Monday in the case of Lloyd Barenblatt. The effect appears to [illegible] much of the crippling effect on congressional committees that was read into the opinion in the somewhat similar Watkins case of two years ago.

In the earlier decision, the court threw out the conviction of John T. Watkins, a Rock Island (Ill.) labor leader, on a charge of contempt of Congress. Watkins had refused to disclose the names of former Communist associates.

The court held that Watkins was within his rights because the purpose of the inquiry and its bearing on legislation had not been made sufficiently clear. The ruling stirred up a storm of protest and led to calls for impeachment of the justices, in the belief that it put all congressional inquiries into a strait jacket.

MONDAY'S 5-to-4 decision considerably narrowed the scope of the Watkins ruling. The majority opinion expressly recognized "that Congress has wide power to legislate in the field of Communist activity in this country, and to conduct appropriate investigations in aid thereof."

The court further held that in the Barenblatt case the subject matter of the investigation had been identified [illegible] Assistant Professor Barenblatt, former instructor [illegible] College, had challenged [illegible] House un-American activities [illegible] had no constitutional authority [illegible] investigate education, but the court rejected his contention. Four of the nine justices, however, agreed with him that the committee exceeded its authority in attempting to expose witnesses "purely for the sake of exposure."

Both the close vote in this case and the language of the opinion made it plain that the court still intends to protect the rights of witnesses if congressional committees stray from fair procedures. The opinion, written by Justice John Marshall Harlan, also warned that the Supreme Court would be "alert" to any intrusion into academic freedom.

IN THE MATTER of probing into subversive activity, however, the court went a long way toward concluding that the interests of the nation outweigh the interests of the individual.

The challenge to this conclusion on the part of the dissenters — Justices Black, Douglas and Brennan and Chief Justice Warren — augurs more strenuous debate as other contempt cases reach the high court.

For the time being, however, congressional inquiries have been given not a green light, at least an amber

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THE NATIONAL SCENE

Fundamental Rights Tackled by Court

The fundamentals of freedom written into the First Amendment have for 168 years provoked justices of the Supreme Court to heights of judicial passion, often recorded in pungent legalistic prose.

The solemn language of the first article of the Bill of Rights pledging freedom of speech and press, of religion and assembly is regarded by most Americans, lawyers and laymen alike, as the most important paragraph of the Constitution.

"If there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate," wrote the late Justice Oliver Wendell Holmes, jr.

The extent to which the rights of the individual as delineated by the First Amendment can be abridged and subordinated to the national interest has been debated exhaustively in the controversy over the tactics of congressional committees in the much-tilled field of Communist investigation.

The issue, intertwined with investigatory rights of the legislative branch, has figured to some degree in almost every subversion case before the Supreme Court. But while the high tribunal has narrowed and defined the constitutional prerogatives in a series of controversial decisions that have invoked the wrath of many members of Congress, it has never met the basic questions head-on.

Drawing the Line

Last week the Supreme Court moved a substantial step closer to drawing an unequivocal line between the investigatory rights of Congress and the constitutional privileges of witnesses summoned before its committees.

It did so in two 5-to-4 decisions that dramatized and deepened the sharp division of the court on the crucial issue of individual rights and the mantle of protection offered by the First Amendment.

The majority opinions clarified and, in some eyes, adulterated the court's celebrated rulings in the Watkins and Nelson cases. But more than this they stated in clearer language than the court has ever used before the Constitutional rights of both Congress and State governments in the anti-subversion field.

The first case involved Lloyd Barenblatt, a former instructor at Vassar College who refused to answer questions of the House Un-American Activities Committee in 1954 about Communist associations.

In upholding Barenblatt's contempt conviction, the high court ruled:

- The committee's right to conduct the investigation was "unassailable."
- The Government's interests outweighed Barenblatt's protection under the First Amendment.
- The Watkins precedent did not apply because Barenblatt did not raise the issue of pertinency before the committee.

Justice Harlan wrote the majority opinion and was joined by Justices Frankfurter, Clark, Whittaker and Stewart.

The four dissenters were Justices Black, Douglas and Brennan and Chief Justice Warren. Speaking for the minority, Justice Black declared:

"Ultimately all the questions in this case really boil down to one—whether we as a people will try fearfully and futilely to preserve democracy by adopting totalitarian methods, or whether in accordance with our traditions and our Constitution we will have the confidence and courage to be free."

Majority Is Challenged

The bitterly worded Black dissent challenged the majority view that the protections of the First Amendment could be outbalanced by the interests of the Government. It said the real purpose of the Un-American Activities Committee is "exposure and punishment" of witnesses rather than investigation for legitimate legislative purposes.

Justice Black said his three fellow dissenters made it plain that they consider the last point alone sufficient reason for a witness to refuse to answer the committee's questions.

Thus they would extend to its broadest possible scope the ruling of the court in the Watkins case that questions need not be answered unless they are "pertinent" to the investigation.

Here, as at almost every other point, the majority and minority views were in irreconcilable opposition. In one of the most significant statements of the majority opinion, Justice Harlan asserted:

"So long as Congress acts in pursuance of its constitutional power, the judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power."

In blunt language the majority opinion said that Congress had complete authority to investigate subversive activities, that it had conferred this authority on the Un-American Activities Committee in vague but still valid instructions (to investigate "un-American propaganda") and that it was not for the courts to question the committee's true motives.

The Witness' Right

Where does this leave a witness who balks at answering questions because he does not consider them pertinent to the subject of the investigation? It leaves him with the right to demand of the committee an explanation of what it is driving at.

As the Supreme Court said in the Watkins case:

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The Worker
The New Leader
The Wall Street Journal
Date JUN 14 1959

62-103

REC- 92

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NOT RECORDED
46 JUN 23 1959

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what the topic under inquiry is and the connective reasoning whereby the precise questions asked relate to it."

In its other 5-to-4 decision last week the court upheld the contempt conviction of Dr. Willard Uphaus, executive director of the New Hampshire World Fellowship Center He refused to give New Hampshire's Attorney General information about the New Hampshire World Fellowship Center, which identifies itself as a pacifist organization.

The Supreme Court had ruled in the Nelson case that the Smith Act under which United States Communist leaders have been convicted for advocating violent overthrow of the Government preempted this field from State law. It threw out the conviction of Steve Nelson, a Pennsylvania Communist Party leader, under the Pennsylvania Sedition Act.

The decision was widely interpreted as "striking down" the sedition laws of 41 other States. In upholding the right of New Hampshire to question Dr. Uphaus, the Supreme Court made it clear that the Nelson decision had been much less far-reaching.

"All the (Nelson) opinion proscribed was a race between Federal and State prosecutors to the courthouse door," said Justice Clark, delivering the majority opinion. It did not, he said, "strip the States of the right to protect themselves."

Sabotage Protection

Had the Supreme Court retreated from its highly controversial position in the Nelson case? There was no evidence that it had. In a widely overlooked sentence in its Nelson ruling, the court had emphasized that its decision did not "limit the right of a State to protect itself at any time against sabotage or attempted violence of all kinds."

The immediate consequence of the Barenblatt and Uphaus decisions was to diminish the prospect that Congress will enact legislation at this session to "reverse" the Supreme Court on the Nelson case and other controversial security rulings. While there remains strong support for such bills, particularly in the House, the two rulings unquestionably eased congressional concern over the direction the high court has taken in the anti-subversive field.

Last week's decisions also eased fears that the court had fallen under the domination of "liberals" on the security issue and its vital constitutional ramifications. Chief Justice Warren and Justices Black and Douglas make up the hard core of the liberals. They are joined on almost all cases involving individual rights by Justice Brennan.

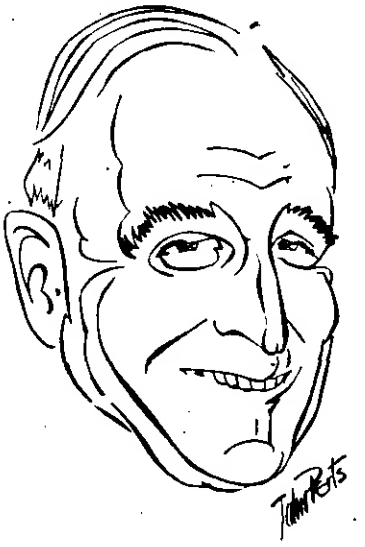
To make a majority they must win over at least one other member of the court. The most-frequent "swing man" is Justice Harlan, who joined the liberals the previous week to make a 5-to-4 majority in the Vitarelli case. But Justice Harlan's firmly stated conclusions in the Barenblatt case would seem to put him past the point of no return on the broader issue of congressional investigations.

Indeed it is hard to see how any of the four justices who sided with him could reconcile their views with those of the minority in cases involving the same basic issues or the same fundamental concept of the First Amendment.

Liberals Lose

The liberals have lost two other important constitutional cases in the current session, the 5-to-4 decision that health inspectors may enter a private home without a warrant, involving the Fourth Amendment, and the 6-to-3 decision that a man may be prosecuted by Federal and State courts for the same offense, despite the double jeopardy provisions of the Fifth Amendment.

In all these cases hinging on interpretation of constitutional safeguards of individual rights Justice Stewart, who joined the court at the start of the present session, has voted with the majority and against the "liberal" bloc. So has Justice Whittaker, who filled the last previous vacancy on the bench in 1957.



JUSTICE HARLAN
Spoke for majority.

Thus President Eisenhower has succeeded by judicious screening of his last two appointees in maintaining the delicate balance on the court that was threatened by his earlier selections. The five Eisenhower appointees now cover the full range of the constitutional controversy, from Earl Warren, on the left, to Potter Stewart, who it appears will take his position somewhat to the right of Justice Whittaker.

One statistical fact still disturbs court critics — the appointment, or conversion, of one more "liberal" would create a new power bloc that could bring a drastic change in the present direction of the court.

0-19 (Rev. 1-28-59)

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...Course
...Stormy Leftward Sailing
...Appears to Be Bearing to Starboard

By ... Knight Jr.

WASHINGTON—The Supreme Court ... by its readjusting its philosophy ... more conservative lines.

... two key decisions of the current term ... Tribunal by 5-to-4 votes upheld the power ... Congress to investigate Communists in ... and affirmed the right of the ... to protect themselves in the field of ... tion. What makes these rulings so significant is that they greatly dulled the effect ... two previous decisions which had deeply upset the more conservative members of the bar as well as the public.

These rulings, furthermore, far from standing alone, come on top of a detectable conservative influence in other types of litigation, mainly those involving economic issues. One of the more important business decisions this term, condoning the Federal Power Commission's established rate-making procedure for natural gas pipelines, sided 5-to-4 with industry in a decision which Justice Douglas declared made a "shambles" of consumer protection against high prices.

These bits of evidence, which run counter to the liberal ideology that last year almost resulted in Congress limiting the court's authority, admittedly serve to indicate rather than to substantiate a trend. Even if future court decisions develop the outlines more clearly, chances are slim the movement will assume the proportions of a revolution, as did the leftward switch of the tribunal after Franklin Roosevelt's ill-fated attempt to pack the bench with his own brand of liberals. More likely, the result will be a change of pace—that is, a holding operation by conservative members of the court against the zeal of their liberal colleagues.

Solidified Allegiance

The reason, quite obviously, is that the liberals—in this case the term refers to those who, while favoring a loose construction of the Constitution, tend to emphasize civil rights while putting, generally, public economic activity above private endeavor—hold their strongest position on the court in many years, thanks partly to a pair of early Eisenhower appointees. Neither Chief Justice Warren nor Justice Brennan, appointed by Mr. Eisenhower, show any signs of breaking ranks with the Tribunal's two liberal stalwarts, Justices Black and Douglas. To the contrary, this allegiance seems to solidify

...Justice Clark could be counted on to ... the conservative chair with high voting ... The conservative view, incidentally, ... a stricter interpretation of the ... with more emphasis upon ... rights, governmental law-enforcement ... and private economic activity. Justice Clark, a Truman appointee, alone dissented from a couple of these 1957 decisions that added fuel to the smoldering anti-court fire. He stood firm against the ruling that seemed to curb Congressional investigations and the order that opened up certain Federal Bureau of Investigation files to defendants.

The placing of individual justices into political pigeonholes, of course, is uncertain at best. The record won't substantiate such a classification down the line. Nevertheless, key cases usually bring the deep-seated philosophical differences of individual justices to the surface. Three decided last week were of that stripe.

In one, the court ruled the House Un-American Activities Committee did not act improperly in asking Lloyd Barenblatt, a former Vassar College instructor, questions about his relationship with the Communist party. In so doing, the court balanced the competing interests of the state and the individual in favor of the state. The effect was to pull up short a 1957 ruling on a similar issue which had been widely interpreted as sharply limiting the power of Congress to investigate.

In the other, the court upheld the conviction of Dr. Willard Uphaus for refusing to give—New Hampshire's attorney-general

The Washington Post and Times Herald
The Washington Daily News
The Evening Star
New York Herald Tribune
New York Journal-American
New York Mirror
New York Daily News
New York Post
The New York Times
The Worker
The New Leader
The Wall Street Journal 6

Date JUN 19 1959

REC-55 62-32585-A

NOT RECORDED
JUN 25 1959

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[redacted] Douglas-Black-Brennan [redacted] majority, which [redacted] significant are the shifts in voting alignment by [redacted] majority from the earlier decisions which the court, in effect, outlawed. The [redacted] Congressional investigations issued only [redacted] Chief Justice Warren, Justices Frankfurter and Harlan joined the four liberals to make up a 6-to-1 majority. Last week, Justices Frankfurter and Harlan bolted the liberals to join Justice Clark and newcomers Whittaker and Stewart in a conservative majority.

The 1956 state sedition case drew dissents from Justices Reed, Burton and Minton, none of whom are now on the court. Justices Frankfurter, Harlan and Clark sided with the liberals to make a six-man majority. All three jumped to the other side of the issue in the latest decision. Justices Whittaker and Stewart comprised the rest of the majority while Justice Brennan deff in with the liberals.

If these voting shifts do indicate a new trend, what will it mean? Broadly speaking, it will mean a more restrained view on the part of the court of its role in government. That is, court conservatives would tend to allow Congress a wide legislative berth even if they, personally, deemed particular legislation unwise.

One thing a more conservatively-tinged court won't mean, however, is a reversal of the historic 1954 school desegregation decision, which is viewed by some observers as an unwarranted assumption of power by the tribunal. But a slower approach to the problems raised by that ruling could be in the offing.

Last week Justice Douglas, speaking for Chief Justice Warren and Justice Brennan, argued the high court should strike down certain Virginia laws which the National Association for the Advancement of Colored People claims are designed to thwart its desegregation efforts. But the six-man court majority, in an opinion by Justice Harlan, was disinclined to move so hastily. Instead, it ruled state courts should be given the chance to consider the laws first. And last Monday the court refused to review a ruling requiring the N.A.A.C.P. to disclose the names of officials to the Arkansas Attorney General for tax purposes.

More likely the key effect will be felt in the balancing of competing state and individual interest in the field of subversion. The conflicting philosophies of individual justices on this issue were pointed up dramatically in the Barenblatt case.

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Leap Into the Dark

The legal Publicity Act concocted by Rep. Howard Smith is once more before the House of Representatives. Its authors have represented it to be a simple measure of limited scope designed to cure a great evil—the unnecessary invalidation of state laws by the Supreme Court. Actually it is one of the most complicated measures ever to come before Congress, and, instead of mending any defect in Federal-state relations, it would shower a veritable plague of confusion as to where Federal law ends and state law begins.

The bill is in the form of a mandate to the courts. It provides that—

> No Act of Congress shall be construed as indicating an intent on the part of Congress to occupy the field in which such act operates, to the exclusion of all state laws on the same subject matter, unless such Act contains an express provision to that effect, or unless there is a direct and positive conflict between such Act and a state law so that the two cannot be reconciled or consistently stand together.

It would be one thing to tell the courts that hereafter Congress intends to specify whether its acts should be regarded as nullifying all state legislation in the same field. It would be quite another thing to say, as this bill does, that no legislation now on the books was intended to have exclusive sway even though the legislation was passed without considering that specific point. This would envelop in doubt many statutes in the fields of drug control, immigration, finance, labor, transportation and so forth.

Representative Kastenmeier has made the point that passage of this bill would give Congress "the very real obligation to re-evaluate and reform all existing Federal statutes in order to determine whether or not each statute shall expressly pre-empt state and local laws." That task, he suggests, would keep Congress in session until Christmas. The Congressman is optimistic. With Mr. Smith's muddler on the books, Congress would be fortunate if it straightened out the law in several years of continuous session.

Obviously [illegible] set the Supreme Court's decision in the Nelson case. It was commonly assumed that the Court of last resort had invalidated state laws dealing with subversion against the Federal Government. In the recent Uphaus case, however, a majority of the Court said that the enforceability of the Pennsylvania Sedition Act had not been superseded by the Federal Smith Act. Under the [illegal] opinion prescribed," the Court said, "was a race between Federal and state prosecutors to the courthouse door." That seems to leave the states all the leeway that would be desirable in fighting subversion, which is primarily a Federal concern.

Despite this clarification of the Court's decision, or shift in its position, the demand for a drastic remedy is pressed in the House. Members will be reckless indeed if they vote for this leap into the dark without knowing what the outcome may be. Seldom has the House been in such grave danger of playing the role of wrecker under the pretense of straightening out the law.

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New York Post
The New York Times
The Worker
The New Leader
The Wall Street Journal
Date JUN 23 1959

53 JUN 30 1959

EX. - 102

REC- 14 | 62-27585-A

NOT RECORDED
145 JUN 29 1959

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86th CONGRESS
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The Court Reverses

... impression of legislating in favor of American Communist activity. These decisions brought the court into conflict with certain elements of the American press, who held that since Earl Warren became Chief Justice, the court had adopted the policy of acting as a legislative body, in the third house of Congress.

In two decisions handed down on Monday, the court reversed itself, it is true, by the narrow margin of 5 to 4, but both decisions are of primary significance in the fight against communism and subversion in the United States.

In the Uphaus decision, the Supreme Court modified the notorious Nelson Case decision, which has been interpreted to mean that a state law proscribing subversion could not be enforced if a federal law on the same subject existed. This Justice Clark, who wrote the decision, said is false: "All the (Nelson) opinion proscribed was a race between federal and state prosecutors to the courthouse door."

Further, he said:

"The opinion made clear that a state could proceed with prosecutions for sedition against the state itself; that it can legitimately investigate in this area follows."

In another case, that involving Lloyd Barenblatt, a former instructor at Vassar College and now a market expert, the question arose as to the right of Congress and the states to inquire into subversive activity. Barenblatt held that the investigative committees existed to expose for the sake of exposing.

In the Watkins Case, the court had held that a witness need not answer questions unless the committee made it clear to him why the inquiry was being held and why the questions were being asked. Anti-Communists have held that the Watkins decision gave every Communist witness a reason for refusing to answer any question whatsoever. In the Barenblatt Case this decision is reversed.

Justice Harlan, in a long opinion, qualifying the Watkins Case, finally said that a Congressional Committee may make inquiries. He said:

"In this framework of the committee's history we must conclude that its legislative authority to conduct the inquiry presently under consideration is unassailable."

Barenblatt is therefore held in contempt, will have to pay a fine and go to jail unless he purges himself of contempt.

Justice Black wrote a dissent which, if it were a majority opinion, would have denied to Congressional Committees many of their investigative functions.

These two decisions will do much to clarify the rights of Congressional Committees to undertake investigations to safeguard the American people from Communists and other forces of evil.

SUPREME COURT

WARREN COURT OBEYS A LAW

It's news nowadays when the Earl Warren Supreme Court upholds an Act of Congress, instead of overruling it or finding that it doesn't mean what Congress thought it meant.

Clinton E. Jencks

On Monday of this week, the Warren court—though by divided votes, to be sure—upheld a 1957 Act of Congress aimed at undoing some of the damage wrought by the Warren court's decision in the Clinton E. Jencks case.

In that affair, the court ruled that Jencks, a union leader convicted of falsely swearing that he wasn't a Red, should have been allowed to see, before his trial, reports on him sent to the FBI by a couple of FBI plants inside the Communist Party.

This decision obviously threatened the FBI's effectiveness in fighting the criminal Communist conspiracy. Congress made haste to limit strictly the types of pre-trial statements of witnesses which accused persons may inspect.

Day before yesterday, the Warren court politely obeyed this Act of Congress, by upholding convictions of seven assorted characters whose attorneys claimed that they had been unjustly prevented from forcing the prosecutors to tip their hands before trial.

It looks as if the Warren court is at last properly impressed by the storm of bench, bar, press and everyday-citizen criticism of its long string of pro-Red decisions. That's a gain; but we hope—

CONGRESS

—will not assume that a few pull-backs by this court mean that the tribunal has mended its ways completely.

The House voted Monday to consider a bill to clip the claws which the Warren court stuck out in the Steve Nelson case and has withdrawn only a little way. In that decision, the court denied the right of states to prosecute subversives plotting against the Government.

Reverse the Nelson Case

The bill under consideration knocks the Nelson ruling into the middle of next week. Maybe it is too broad, as the Justice Department fears. But if so, it can be narrowed appropriately by skilled Congressional lawmakers—after which, we think it should by all means be enacted.

It's time to stop this trend toward government by the Supreme Court, and restore the court to its proper function of interpreting laws instead of making them.

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The Washington Post and Times Herald
The Washington Daily News
The Evening Star
New York Herald Tribune
New York Journal-American
New York Mirror
New York Daily News 41
New York Post
The New York Times
The Worker
The New Leader
The Wall Street Journal
Date JUN 24 1959

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62 JUL 8 1959

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WARREN COURT'S RATES

The Earl Warren Supreme Court on Monday lifted the ban on the New York State censorship on "Lady Chatterley's Lover," a movie based on a gamy novel by the late D. H. Lawrence.

Chief Justice Earl Warren

With the other hand the Warren court knocked out the Government's system of security checks on defense plant workers, of whom the nation has about 3,000,000.

The Government has lost free to require discharge of dangerous defense plant workers without letting them confront the witnesses or informers against them.

This, says the Warren court, never has been authorized by Congress or the President, and therefore isn't cricket.

It seems to us that such an authorization is in order, in a hurry. Exposure of witnesses or informers would in many cases cripple counter-espionage operations.

The Warren court isn't always wrong, though. In another of its—

MONDAY DECISIONS

—we think it did itself proud.

We refer to the ruling that TV and radio stations and networks can't be sued for libelous statements made over their facilities by political candidates. Such immunity logically follows from Congress' decree that stations must grant equal time to opposing candidates and mustn't censor their speeches.

The Justice Department says the immunity extends to newspapers printing such speeches without slanting them.

All this seems sensible to us. When newspapers and broadcasters act as mere conveyor belts for other people's views, they should be immune to libel suits on those views. Otherwise, they would have to refrain from carrying such material—thereby omitting an important service to the public.

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The Washington Post and Times Herald
The Washington Daily News
The Evening Star
New York Herald Tribune
New York Journal-American
New York Mirror
New York Daily News 41
New York Post
The New York Times
The Worker
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The Wall Street Journal
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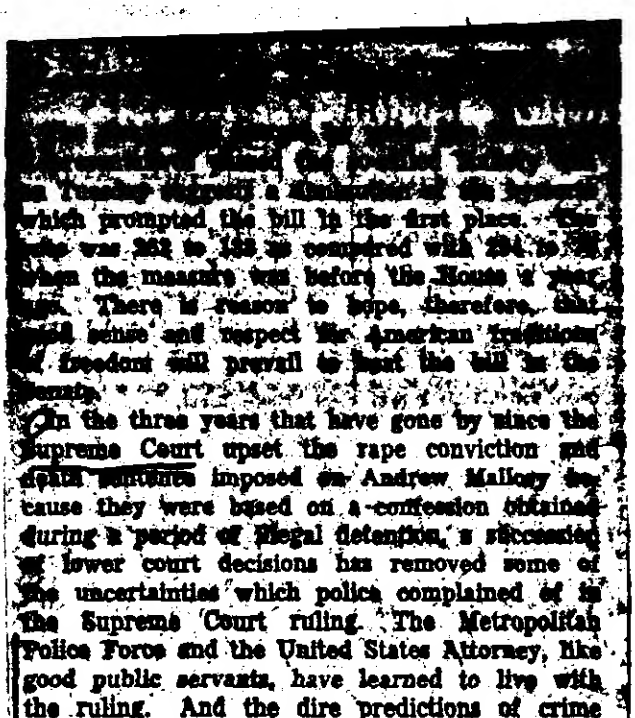

which prompted the bill in the first place. The vote was 262 to 155 as compared with 294 to 95 when the measure was before the House a year ago. There is reason to hope, therefore, that good sense and respect for American traditions of freedom will prevail to beat the bill in the Senate.

In the three years that have gone by since the Supreme Court upset the rape conviction and death sentence imposed on Andrew Mallory because they were based on a confession obtained during a period of illegal detention, a succession of lower court decisions has removed some of the uncertainties which police complained of in the Supreme Court ruling. The Metropolitan Police Force and the United States Attorney, like good public servants, have learned to live with the ruling. And the dire predictions of crime rampant in the streets of the Capital as a result of the ruling have proved groundless.

The bill passed by the House on Tuesday provides that confessions shall not be inadmissible solely because of delay in arraigning an arrested person and that the police inform suspects that they are not required to make any statements and that any made may be used against them. The objections to this bill can be summarized briefly. First, it does not oblige the police to tell an arrested person that he has a right to counsel and thus it operates to deprive him of that right at precisely the time when it could be most important to him—before he has made damaging admissions, instead of after. Second, it would effectively nullify the privilege against self-incrimination by allowing the police to question suspects in the lonely and intimidating atmosphere of a police station where cooperation (or confession) may well seem the part of prudence. The police warning to the suspect affords dubious protection. A policeman may tell a prisoner of his rights in such a tone of voice as to warn against any resort to them.

Senator Keating has indicated that he will seek to amend the bill before it comes to a vote in the Senate, but the change he has proposed would not, in our opinion, make it sound legislation. Whatever problem remains of screening suspects before they are arraigned can best be worked

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149 JUL 15 1959

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The Washington Post and Times Herald
The Washington Daily News
The Evening Star
New York Herald Tribune
New York Journal-American
New York Mirror
New York Daily News
New York Post
The New York Times
The Worker
The New Leader
The Wall Street Journal
Date JUL 10 195

Sen. Hennings Calls For No Tampering With Mallory Rule

Says Congress Would Confuse And Not Clarify

By John J. Lindsay
Staff Reporter

Sen. Thomas C. Hennings Jr., (D-Mo.) urged Congress yesterday not to tamper with the Supreme Court Mallory decision.

Hennings' plea set the stage for the expected showdown fight in the Senate on a bill passed last week by the House to "clarify" the Mallory rule.

Congressional maneuvering over the past two years to "clarify" the Mallory rule, said Hennings, leads to the "inescapable conclusion that we would be better off if we left the matter in the hands of the courts."

Congress in its efforts to "improve" the rule—on admissibility of confessions as evidence in court trials—has only increased confusion, Hennings said.

The Mallory decision holds criminal confessions inadmissible as evidence if obtained from a suspect during an unnecessary delay between arrest and arraignment.

Predictions Recalled

The decision was handed down in the case of Andrew R. Mallory, whose confession to the rape of a District woman was held inadmissible because it was obtained during a 7½-hour delay in arraignment.

The bill passed by the House last week would prohibit barring confessions from evidence solely on the grounds of delay in arraignment. It would also require that police advise suspects of their right not to make statements.

Hennings said the dire predictions of "timid souls" that the Mallory rule would release upon the District a "veritable horde of criminals" and "shatter" effective law enforcement throughout the country, have not materialized.

Keating Plan Criticized

Law enforcement officials, said Hennings, have succeeded in working within the mandate of the Supreme Court. They have been diligent, he said, in observing the constitutional rights of criminal suspects. "This," he said, "is exactly what the Supreme Court wanted."

Hennings criticized a proposed amendment to the House bill by Sen. Kenneth B. Keating (R-N. Y.) that would—in effect—leave to criminal juries discretion to determine whether a delay in arraignment is sufficient to invalidate a confession.

Hennings said this would only muddy legal waters unnecessarily. Practice under the ruling, he said, shows it needs no "clarification."

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High Court Accused Of Bowing to Congress

The Supreme Court was accused yesterday of deferring too often to Congress.

Justice Felix Frankfurter was singled out for particular criticism in an analysis of the Court and Congress presented by Harold W. Chase of the University of Minnesota at an American Political Science Association meeting here.

Chase, an expert on the Supreme Court, discussed the Court's interpretation of congressional acts and actions since Earl Warren was named Chief Justice six years ago.

"Although a minority of the judges would prefer to have it otherwise," Chase said, "the Warren Court as an institution has been exceptionally deferential to Congress."

"So much so," Chase added, "that for one with libertarian values it has been too permissive, permitting the Congress to make grave invasions of fundamental liberties."

Many commentators on the Court's performance under Warren have looked upon the Court as a bulwark against congressional excesses.

But Chase said that "the real indictment of the Court should rest on the grounds that it has failed to hold the power exercised by Congress within constitutional bounds."

"In recent years," Chase said, "Justice Frankfurter has been so intrigued with the difficulty of statutory interpretation that he has vied with himself to find prose adequate to describe it."

At another session, John R. Schmidhauser of the University of Iowa sharply criticized the American Bar Association and the Conference of State Chief Justices for their attacks on the Court.

Schmidhauser said their attacks reflect "deep-seated differences in social and political values" with the Supreme Court rather than "a dispassionate appraisal of the Court's work by allegedly personally disinterested leaders."

The Chief Justices criticized the Court a year ago. Last winter a Bar Association committee attacked many of the Court's decisions since 1953.

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The Washington Post and Times Herald A-1
The Washington Daily News
The Evening Star
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New York Journal-American
New York Mirror
New York Daily News
New York Post
The New York Times
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The New Leader
The Wall Street Journal
Date 9/12

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Red Ruling Debated at Bar Meet

By WILLIAM MACKEY

The critics of recent United States Supreme Court decisions on civil liberties yesterday were labeled more of a threat to national security than the subversive Communist Party card-carrying elements they disclaim.

Attorney Joseph A. Ball of Long Beach, a past president of the State Bar, made it plain that he included the American Bar Association's committee on Communist tactics as prime offender.

Defending the decisions of the high tribunal in a debate which concluded the State Bar convention at the Fairmont Hotel, Ball praised the leadership of Chief Justice Earl Warren, target of most of the critics.

Clash of Views

"I say thank God for Earl Warren," Ball declared to the overflow crowd of lawyers and judges.

On the other side of the debate, former ABA president Loyd Wright of Los Angeles said:

"Too often of late the decisions of the court have given evidence that it has abandoned its appointed role in the constitutional system and has embarked on a campaign

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o effecuate the personal preference an dphilosophies of its members."

Ball said that the decisions which the ABA committee in February claimed "have encouraged Communist activity" simply determined whether individual rights had been protected.

PRECIOUS LIBERTIES

"In a time of threat to our national security, we should not part with such precious liberties," Ball said.

When prominent, sincere, honest people get up and say we should curtail these liberties in the interest of national security they are heard . . . and they are believed.

"Therein lies the danger."

Ball said the whole appraisal of the courts leadership was not properly researched by the committee when it was presented to the ABA house of delegates, which approved the report.

He said the report "imposes on me a policy which I abhor, a policy fused to party line thinking."

Wright, emphasizing lawyers had a fundamental right to criticize the court, said there are four major weapons in the hands of Congress for protecting the Nation's internal security: criminal law, personnel security, limitation on international travel, and exposure.

In all four fields, Wright said the Supreme Court in recent decisions "has disrupted if not emasculated congressional efforts . . ."

Wright declared that it is Congress which is charged with the responsibility of making laws to protect national security and that lawyers in Congress have done the work effectively.

Wright said that in many of the decisions the Supreme Court has gone "outside its job of deciding cases to warn the Congress about how its affairs must be managed."

The former ABA head said reports that Warren quit the ABA because of the organization's critical committee report were untrue. Warren's letter of resignation was received nine months before the report was written, he said.

Wright said that the Warren Court's decision in the Jencks Case (opening 261 files for examination) too broad, confusing and produced chaos in lower Federal courts. He said the rule of the case "held that the defendant, in some unspecified degree, is entitled to examine reports received by the FBI."

Supreme Court Rules F. B. I. Arrest Illegal

Agents Had No Warrant When They Seized Stolen Goods in Car

By The Associated Press

WASHINGTON, Nov. 23. — The Supreme Court declared today that suspicion alone is not sufficient reason for a police officer to lay hands on a citizen and set aside by a 7-2 vote the conviction of John Patrick Henry of Chicago on charges of unlawful possession of three cartons of stolen radios.

The majority opinion, written by Justice William O. Douglas, said F. B. I. agents investigating [illegible] stopped without [illegible] and discovered the radios. [illegible] had been [illegible] arrest warrants.

The F. B. I. agents had no [illegible] warrants and Justice Douglas declared their actions were illegal and unreasonable. He added:

"[illegible] the Fourth Amendment unreasonable [illegible] to [illegible] be [illegible]"

Justice Tom C. Clark wrote a dissenting opinion in which Chief Justice Earl Warren and Justice Clark said [illegible] activities [illegible] by the agents were sufficient [illegible] the car.

Henry was tried in United States District Court in Chicago on Jan. 4, 1958, convicted of traffic from an interstate ship-

ment and sentenced to a year's imprisonment.

The account of the Henry case, as set out in the record before the high court, was that the F. B. I. agents became suspicious when they found the cartons of radios took Henry to their Chicago office and several

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High Court

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hours later learned the radios had been stolen from a shipment of the Zifrin truck lines.

Justice Douglas for the majority said F. B. I. agents cannot make felony arrests without a warrant unless offenses are committed in their presence or unless they have reasonable grounds to believe that the person has committed or is committing a crime.

In Henry's case, Justice Douglas said, the F. B. I. agent did not have reasonable cause to believe a crime had been committed by Henry, and further "the fact that afterwards contraband was discovered is not enough."

Justice Douglas recalled an earlier Supreme Court decision that an arrest is not justified by what a later search turns up.

Alertness Praised

Justice Clark's dissent said that when an investigation proceeds to the point where an agent has reasonable grounds to believe that an offense is being committed in his presence, he is obligated to proceed to make searches, seizures and arrests as the circumstances require.

"It is only by such alertness that crime is discovered, interrupted, prevented and punished," he wrote. "We should not place additional burdens on law-enforcement agencies."

In other actions today the court:

Security Program Is Killed

Nation Weakened by High Court Ruling

The recent action of the U.S. Supreme Court in striking down the government's industrial security program which covered some three million workers in private defense plants again brings up the question of what the nation is going to do to protect itself against Communist infiltration, espionage, propaganda and deceit.

The industrial security program was used by the government to screen out privately employed "security risks" and withhold from them classified information.

Often the worker had to be fired because without the classified information he could not do his job.

The court in its decision warned that any new program must provide fairplay procedures — expressly the right to confront an accuser—*or* give good reasons for denying these "traditional safeguards."

In the past several years the Supreme Court has struck down more than two score procedures used by the government to combat communism.

Many people think that the nation is in an extremely vulnerable position as a result of the Supreme Court decisions.

The Supreme Court justices have been accused of being unaware of the determination of the Communist conspiracy to destroy the United States.

The decisions, which have had the effect of giving the Communists great freedom to carry on with their operations, have been widely criticized.

A recent report of the House Committee on Un-American Activities on Communist activities in Southern California illustrates the point.

A stepped-up program of action was ordered by the Communist leaders who act on command from Moscow, the committee said.

"To increase the success of this stepped-up process, Communists are under orders to wear a new look," said the House committee report. "In other words, to a degree unmatched in party history, Communists are now promoting themselves as loyal to the United States, peace-loving and humanitarian in purpose, and anxious to work in harmony with socialists, liberals and even capitalists for the good of the nation."

Concerning the Supreme Court decisions, the Senate Internal Security Subcommittee had this to say:

"The net of all these decisions has been comfort for the Communists and criminals, frustration for law-enforcement officials, serious interference with Congress' self-informing function, and destruction of all efforts of the American people to protect themselves against the subversion at home through their state governments."

It would seem that the efforts of the Supreme Court to protect the individual have gone so far that the safety of the nation has been endangered.

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"Butte Daily Post"
Butte, Montana
December 3, 1959

Editorial Director:
George W. McVey

Butte Office

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Police Power Curbed Again

"It is better, as the Fourth Amendment teaches, that the guilty sometimes go free than that citizens be subject to easy arrest." These are the words of Supreme Court Justice William O. Douglas, in a decision which has newly affirmed one of the limits to police power in the United States.

In the case under consideration, a man named John Patrick Henry of Chicago had been convicted of theft. There wasn't much doubt that he had committed theft.

But the Supreme Court held that the evidence against Henry was inadmissible for use against him at his trial because the FBI agents had not had sufficient reason to search his car. They had stopped him only because they were suspicious. They had no search warrant; they did not have reason to believe that he had committed a felony. In the United States, suspicion is not enough.

The Supreme Court's decision in this case is a good one. It will be good for the American people and it should be good for the FBI.

Agents of the FBI are taught that they are representatives of the best national police organization in the world. This is probably true. It will not harm the spirit of the bureau to have the Supreme Court put down its judicial foot and say, "This time you went too far."

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The Hartford Times

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The Court and the FBI

Once again the Supreme Court has challenged the FBI. In a 7-2 decision the court has ruled that suspicion alone is not sufficient reason for a police officer to make an arrest. The majority opinion, written by Justice Douglas, cited the Fourth Amendment's bar against "unreasonable searches and seizures" and made the point that should be firmly pasted in every man-hunter's hat: It is better that the guilty sometimes go free than that citizens be subject to easy, capricious arrest.

This is basic democratic doctrine. The FBI and much less exalted guardians of the law in our land have too often flouted it, sometimes deliberately, sometimes because they are too intrigued with the hot pursuit to remember it.

In this case the G-men, investigating liquor thefts, stopped "without probable cause" an automobile owned by one John Patrick Henry of Chicago; but instead of liquor they found some stolen radios. Henry was convicted and received a year's sentence. But the court says the accidental discovery of a theft was no justification for an unjustified arrest. The FBI touchdown was scored with an illegal formation; it doesn't count.

For know-nothing critics of the court the ruling is a double blow; Chief Justice Warren joined Justice Clark in dissenting. Whatever happened to the Warren "and FBI plot"?

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BY MY DIVISION

EDITOR: JAMES WECHSLER

RE: RECENT COURT DECISION CONCERNING TFIS MATTERS

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Supreme Court Curbing Police, Says Tompkins

Tuscaloosa Police Chief W. C. Tompkins Monday criticized the U.S. Supreme Court for its over-protection of so-called rights of individuals at the expense of weakening law enforcement agencies' attempts to protect the public from criminals.

Tompkins made the charge while addressing the weekly luncheon of the Kiwanis Club at Hotel Stafford.

In more than one case, Tompkins said, the Supreme Court has denied police officers the right of reasonable interrogation of a suspected criminal.

And in more than one instance, he added, the Supreme Court has reversed the decisions of lesser courts on insignificant technicalities and set guilty criminals free.

Every police officer, Tompkins said, is taught certain rules of arrest—namely, the authority to arrest and conduct a reasonable search when they have reason to believe a felony has been committed. But now that privilege has been violated by the Supreme Court, he said, citing an example involving the arrest of a Washington, D.C., woman, Judith Coplan, for espionage.

In this case, Tompkins said, the Supreme Court ruled that the police officers had no right to search the woman's handbag in which the officers found additional evidence substantiating their claim of espionage. Although the FBI had eyewitness evidence against her, Tompkins said, she was freed by the court.

In another case, Tompkins pointed out that the Supreme Court ruled that the FBI must open its secret files of information on criminals to the defendant or turn him loose.

This act seriously endangers the law enforcement agency's effort in securing information from informants in the underworld, Tompkins said.

Something must be done, Tompkins said, but nothing will be done until the public is aroused enough to urge Legislative action.

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33 DEC 28 1959 107

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Today in National Affairs

Criticizing Supreme Court Upheld as a U. S. Privilege

By DAVID LAWRENCE

WASHINGTON, Mar. 2.—Commenting on a decision this week by our highest court, the following statement has been made in criticism:

"A performance of this kind deprives the Supreme Court of the intellectual respect it needs now more than it ever did, in these demanding times."

Lawrence

Who says this? Does it come from one of the critics who has been lamenting the decisions of the Supreme Court on states' rights, comunism, the Fifth Amendment and so on? Is it a pronouncement by a committee of the American Bar Association or of the Conference of State Supreme Court Justices? Or is it an exclamation by some of the many lawyers and judges who have come to the conclusion that the Supreme Court has usurped legislative functions?

Not at all. The criticism quoted above was made this week in an editorial in "The New York Times" which for a long time has been one of the foremost defenders of Supreme Court rulings.

It so happens that the court is right in this week's decision and doesn't deserve the blame being heaped on it by those who don't like the ruling. But the importance of the criticism is that it clears the air. It asserts, in effect, that adverse comment on the Supreme Court is not sinful. For, despite the impression that so many mistaken defenders of the court's legislative rulings have sought to convey in the past, criticism of a court decision is not an "undermining of the institution"—the phrase so often applied to the court's critics in recent years even by high officials here.

The Right to Criticize

Nobody who is at all familiar with our judicial system really wants to abolish the Supreme Court of the United States as the institution which must decide cases in the jurisdiction specifically prescribed by the laws of Congress and by the provisions of the Constitution. But every critic feels he has a right to point out faulty reasoning of the justices.

The case which aroused the criticism of "The New York Times" concerned two employees of the State of California who were dismissed under an ordinance which says they must be fired if they decline to testify before a Congressional committee concerning subversion. They had invoked the Fifth Amendment and thereby refused to tell about alleged subversaibe affiliations.

The Washington Post and Times Herald
The Washington Daily News
The Evening Star
New York Herald Tribune
New York Journal-American
New York Mirror
New York Daily News
New York Post
The New York Times
The Worker
The New Leader
The Wall Street Journal
Date MAR 3 1960

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NOT RECORDED
117 MAR 14 1960

51 MAR 14 1960

In another instance involving New York State laws, known as the Slochower case, the Supreme Court of the United States had ruled in 1956 that state employees could not be dismissed under a law that said that such employees who invoked the Fifth Amendment would lose their jobs. "The Times" said in its editorial:

"Instead of specifying that employees who refuse to testify at hearings because of possible self-incrimination must be dismissed, the California law requires dismissal of any persons who decline to testify for any reason.

"This distinction without a difference was seized upon by the majority to distinguish Monday's decision from the Slochower case. But for all practical purposes, the latter must now be regarded as a dead letter. If a state or city is wise enough to avoid putting the term 'self-incrimination' explicitly in the law, it is free to punish employees who exercise a privilege granted to them as citizens by the United States Constitution. The court's new treat is regrettable. . . ."

Myers Case Cited

But shouldn't every public employer be permitted to fire any employee who is incompatible with other employees or inefficient without giving any reason? The Supreme Court of the United States in the famous Myers case in 1926, for instance, upheld the right of the President to fire a postmaster or any other government employee at a time when Congress had not specified or limited the grounds for removal.

The question in the current case is whether a state may dismiss an employee who refuses to testify at Congressional hearings. Plainly the employees had a right to test the constitutionality of the California law. They were in a sense "resisting" it, as they had the privilege of doing, though Southerners who test court orders are usually described as "defying the law" and as engaging in "massive resistance."

There can be no doubt that the Supreme Court in this case changed its mind because it felt the facts were different—the two laws were not worded the same way. But what shall be said of a Supreme Court that merely reverses itself when the facts and constitutional principles are identical and explains it all away by a statement declaring that whatever was the "psychology" prevalent at the time of the previous decision "must now be reversed." This was the ground for the 1954 desegregation decision.

Perhaps those who have been unwilling to see the risks involved in reversals by the court when the same principle has already been built into established law now will adopt a more charitable attitude toward the critics who have taken the high court to task for its irregularities.

0-20 (Rev. 1-11-60)

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(ATTORNEYS)

THE SUPREME COURT WILL HOLD A SPECIAL SESSION ON TUESDAY, AUG. 30, TO GIVE ATTORNEYS ATTENDING THE AMERICAN BAR ASSOCIATION CONVENTION HERE AN OPPORTUNITY TO BE ADMITTED TO THE COURT'S BAR.

THE SESSION, TO BE HELD IN THE MORNING, WILL TAKE UP NO OTHER BUSINESS.

MORE THAN 12,000 PERSONS--LAWYERS AND THEIR FAMILIES--FROM THE UNITED STATES AND FOREIGN COUNTRIES ARE EXPECTED TO ATTEND THE ABA'S 83RD ANNUAL CONVENTION.

REQUIREMENTS FOR ADMISSION TO THE SUPREME COURT BAR ARE MEMBERSHIP IN THE BAR OF THE HIGHEST COURT IN THE APPLICANT'S STATE AND A FEE OF $20.

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WASHINGTON CAPITAL NEWS SERVICE

Bar Evidence In U. S. Cases Unless Legal

Fourth Amendment Cited by High Court

WASHINGTON, June 27 (AP). —The Supreme Court today barred use in Federal criminal trials of evidence illegally obtained by state and local police officers.

By a vote of 5-4, the court swept aside the old "silver platter" doctrine. Under it, Federal prosecutors could use evidence unlawfully obtained by state and local officers. Under the new rule, state-obtained evidence must meet the test of the Fourth Amendment's guaranty against unreasonable search and seizure.

Majority Decision

Speaking for the majority, Justice Potter Stewart summed it up:

Evidence obtained by state police officers during a search which, if conducted by Federal officers, would have violated the defendant's immunity from unreasonable searches and seizures, under the Fourth Amendment is inadmissible over the defendant's timely objection in a Federal criminal trial."

Justice Felix Frankfurter, in a dissenting opinion concurred in by Justices Tom C. Clark, John M. Darlan and Charles E. Whittaker, sharply criticized the new doctrine. Justice Frankfurter said it overturned "a rule of evidence always the law and formally announced in 1914 by a unanimous court. . . ."

In its final decision of the 1959-'60 term, the court overturned the conviction of James Butler (Big Jim) Elkins and Raymond Frederick Clark, of Portland, Ore. The decision sends the case back to the Federal court for further proceedings.

Elkins is the man who hurled sensational charges in 1957 hearings by the Senate Rackets Committee.

Accused Teamsters

A one-time kingpin gambling operator, he charged that Teamsters Union officials were conspiring to take over Portland rackets. He also accused various public officials of corruption and said he had tape recordings to back up his words.

At the time of his testimony to the Senate committee, Elkins was in difficulty with state authorities. On May 17, 1956, state officers with a warrant had searched Clark's home and seized five tape recordings of telephone conversations. Two state courts later ruled the warrant was faulty and the tape s were barred from use in a state trial.

The tapes were deposited for safekeeping in a bank, where Federal officers got possession of them by serving a search warrant. The tapes were admitted in evidence in trial of Elkins and Clark in Federal court in Portland.

Jailed and Fined

Elkin was sentenced to twenty months in prison and fined $2,000. Clark got six months and fined $2,000. Clark got six months and $500 fine. Their attorney argued before the Supreme Court the evidence against Elkins and Clark violated their Constitutional rights because it was obtained through search and seizure."

Agree To Review Wiretap Decision

In another action, the court agreed to review a decision that wiretap evidence may be used in criminal trials in state courts. The decision was given by the United States Court of Appeals in New York in the case of Burton N. Pugach, a Bronx lawyer now under indictment on a number of charges.

Negroes' Appeal Is Dismissed

The court dismissed the appeals of five Negroes convicted of trespassing on a city-owned, privately operated golf course in Greensboro, N. C. The tribunal held that no Federal question was involved because of the failure of Negroes to raise such a question in their appeal before the North Carolina Supreme Court. Chief Justice Earl Warren, in a minority opinion, said the Negroes should be allowed to press their claim of unconstitutional racial discrimination in the State Supreme Court.

0-19 (Rev. 1-11-60)

Supreme Court Gets Sit-In Case

By James E. Clayton
Staff Reporter

The Supreme Court yesterday heard a sit-in case that looked deceptively easy until the Justices began probing the arguments. Then it became apparent that the lack of one fact in the record of the trial may force the Court to decide a constitutional question it might otherwise have avoided.

The case involves a trip to his home in Selma, Ala., that a Howard Law School student, Bruce Boynton, started just before Christmas in 1958. When he got to Richmond, Boynton climbed off the Trailways bus and went into the terminal to eat.

When the bus left, he was not aboard because he had insisted that he had a legal right to eat in the restaurant inside the terminal, which was reserved for whites. He refused to go to a similar restaurant for Negroes and was convicted of trespassing and fined $10.

At his trial, it was established that the restaurant operated under a lease from the Trailways Bus Terminal, Inc. But nothing was introduced into evidence to show who owned the terminal corporation.

As the case made its way to the Supreme Court, Boynton's lawyers argued that the state had illegally helped the restaurant discriminate against him when the arrest was made and that the refusal of the restaurant to serve him was an unconstitutional burden on interstate commerce.

They abandoned a claim they made in the trial court that the Interstate Commerce Act also outlawed the restaurant's refusal to serve him. The reason it was dropped was that although the Act orders bus lines not to discriminate, there was nothing in the trial record to show that the bus line had a connection with the restaurant.

When the case got to the Supreme Court, the Solicitor General intervened on Boynton's side as a friend of the Court. He produced documents to show that the bus line did own the terminal and could be connected with the restaurant.

In the argument yesterday, Walter E. Rogers of Richmond, special counsel for Virginia, admitted that if the bus company operated the restaurant it could not refuse to serve Negroes. He argued that the bus company had no control over the restaurant and that the restaurant, as a private business, can discriminate if it chooses.

Even if the bus company did own the terminal, a fact Rogers argued the Court cannot consider since it was not before the lower courts, the restaurant still has a right to discriminate unless it is totally controlled by the terminal, he contended.

Thurgood Marshall, chief counsel for the National Association for the Advancement of Colored People, arguing Boynton's case, contended that any restaurant set up for the purpose of serving food to passengers in interstate commerce cannot discriminate.

The bus terminal is as much in interstate commerce as is the bus, Marshall argued. He relied on an old Supreme Court decision that held unconstitutional a Virginia law requiring segregated seating on interstate buses.

It became clear as the argument progressed that the absence of any record of who owned the bus terminal was seriously bothering the Justices.

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The Washington Post and Times Herald
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New York Herald Tribune
New York Journal-American
New York Mirror
New York Daily News
New York Post
The New York Times
The Worker
The New Leader
The Wall Street Journal
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Justice Potter Stewart pointed out that if the Court ruled that any restaurant cannot discriminate against passengers in interstate commerce, it would affect the tiny lunchrooms attached to gas stations at which buses sometimes stop as well as the large city bus terminals.

Marshall indicated that not many of those tiny places remain, but Justice Stewart replied, "Well, I stopped at one last weekend."

With the fact in the record that the bus company controlled the restaurant, the Court could rule that Boynton's arrest violated the Interstate Commerce Act. Without it, the Court may have trouble deciding the case except on a constitutional issue, something the Justices prefer to avoid.

It was clear from the argument that they had no desire to tackle the underlying constitutional issue, which is the backbone of the legal attack now going on over arrests for sit-ins.

That is the issue whether a state's action in making an arrest to support a private businessman's desire to discriminate is a violation of the 14th Amendment.

Marshall barely mentioned this issue in his hour-long argument, although it is discussed in his brief. The Solicitor General had made a strong argument in Boynton's favor on this issue in his brief. He did not argue yesterday.

On the other constitutional issue, that the restaurant's refusal to serve Boynton unnecessarily burdened interstate commerce, the Court has trouble because it normally prefers to rule on the basis of an act of Congress if it exists. In this case, the Act exists, but the missing fact from the case makes for application difficult.

Tuskegee Ruling Hints Doom of Gerrymander

By ROBERT E. CLARK
Star Staff Writer

A Supreme Court victory by Negroes who objected to being gerrymandered out of the city of Tuskegee, Ala., eventually may doom the time-honored American custom of political gerrymandering.

The high court has traditionally refused to enter what it has described as the "political thicket" of gerrymandering, which usually involves carving the boundaries of political districts to the advantage of one party or group.

But yesterday the nine justices edged toward the thicket—though in gingerly fashion—with their holding that the Alabama legislature had no right to recast Tuskegee into a 28-sided shape if its purpose was to discriminate against Negroes.

There is no question that this was the legislature's purpose for it was openly conceded when Tuskegee's once-square boundaries were redrawn in 1957. The Negroes who carried their appeal to the Supreme Court must now go through the legal formality of proving their case in Federal District court, however.

See Difference in Principle

Yesterday's opinion by Justice Frankfurter emphasized the difference in principle between gerrymandering for political purposes and gerrymandering which has the intent of racial discrimination. To some judicial observers the line between the two is barely discernible, however, and it seems likely that the court at some future date will use the Tuskegee decision as a stepping-stone for a further advance into the gerrymandering thicket.

The Frankfurter opinion reversed a decision of the Fifth Circuit Court of Appeals, which had relied on previous Supreme Court decisions for its finding that Federal courts lacked jurisdiction in gerrymandering cases. Appellate Judge John Minor Wisdom said at that time:

"I can see no difference be-

INTERPRETIVE REPORT

to hold the line for the present against judicial interference in gerrymandering that it regards as purely political. It will have the opportunity to do so shortly in another pending case in which white voters in Tennessee are protesting gerrymandering which permits rural districts to dominate the Tennessee Legislature.

Tuskegee had a population of 5,397 Negroes and 1,310 whites before its boundaries were re-drawn. Of some 400 Negro voters formerly within the city limits, only four or five are left and Tuskegee Institute, famed seat of Negro learning founded by Booker T. Washington, is now outside the city boundaries.

Divide in 2 Decisions

The court's unanimity in the Tuskegee decision was notably lacking in two other rulings on the busiest day of its 1960-61 term yesterday. Decisions in two cases involving the rights of witnesses before legislative committees investigating subversion brought bitter protests from the liberal bloc.

By a 6-3 vote, the court denied a second hearing to Dr. Willard Uphaus, who has almost completed his one-year jail sentence for refusing to reveal the names of guests at his World Fellowship Center in New Hampshire. It divided 5-4 in upholding the contempt of Congress conviction of [illegible] refusing to persists in refusing to reveal the names.

In the McPhaul case, the three-man liberal bloc, joined by Justice Brennan, objected chiefly to the fact that there had been no proof that Mrs. McPhaul, who was sentenced to nine months in prison and fined $500, had been an official of the Civil Rights Congress.

Justice Whittaker, who spoke for the majority, noted that the subcommittee had reason to believe Mr. McPhaul was executive secretary of the group, which has been listed by the Attorney General as a subversive organization. But the court's liberals felt the defendant should have been protected by the legal presumption of innocence until proven guilty.

"Today we take a step backward," Justice Douglas said for the dissenters. "We allow a man to go to prison for doing no more, so far as this record reveals, than challenging the right of a committee to ask him to produce documents."

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Chiseling the Bill of Rights

THE Supreme Court's narrowly split decision on movie censorship strikes directly at a fundamental right guaranteed by the Constitution.

It limits the traditional guaranties of the First Amendment, the key provision of the Bill of Rights:

"Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances."

The decision, voted five to four, affirms the power of states and cities to require movies to be submitted to a board of censors before they can be shown.

In question was a Chicago ordinance aimed at immorality, obscenity and scenes deemed to incite breaches of the peace.

This has been the announced purpose of censorship from time immemorial. It was the alibi when Hitler's Nazis burned the books, placed the schools, newspapers, radio, theater and all other forms of public expression under government control.

There are plenty of laws to deal with those who abuse the rights of free speech, whether in public meeting, in print or on stage or screen. These involve confiscation of the offending material, plus criminal prosecution of its authors.

Pre-censorship is something wholly different. It sets up select boards empowered to judge, in private, what is good for the public to see and hear. Almost inevitably this censorship goes far beyond such obvious things as obscenity. It filters out unorthodox ideas. It is, in fact, inclined to combat any ideas at all; and it sets the precedent for systematic thought control whenever demagogs in local power — from Ku Kluxers to religious and political fanatics—may so decree.

As Chief Justice Warren said in his dissenting opinion, this decision "presents the real danger of eventual censorship for every form of communication."

And, in the words of Justice Douglas, "Whether—as here—city officials or—as in Russia—a political party lays claim to the power of governmental censorship . . . no such regime is permitted by the First Amendment."

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SUPREME COURT

Dissenting Opinions

Just before noon on the last week the nine black-robed justices of the U.S. Supreme Court paused briefly in an anteroom and solemnly shook hands all around before taking their places at the long polished walnut bench in the mahogany-draped, Ionic-columned courtroom. The gesture is a traditional one, dating back a half century and symbolizing that whatever their individual differences outside the court, the justices leave them at the door. But for Chief Justice Earl Warren and Associate Justice Felix Frankfurter, the handshake was more like two fighters touching gloves at the opening bell. In Washington circles it was no secret that there was growing disaffection between these two dissimilar men—Warren the hulking (6 foot 2) and hearty Westerner who was three times governor of California; Frankfurter, the small (5 foot 6) and snap-eyed intellectual who was once a professor of law at Harvard. Just this past March they had clashed openly, but briefly, in court.

Then last week they erupted into a display of judicial temper such as is seldom witnessed in the hushed chamber.

The incident that stunned the courtroom and made its way into newspaper headlines arose over the case of Willie Lee Stewart, a District of Columbia Negro who, after two trials were nullified by appeals, was convicted of a 1953 murder the third time around. In a 5-4 decision, the Supreme Court ruled that Stewart should have still a fourth trial.

The majority opinion, concurred in by Warren and Associate Justices Hugo L. Black, William O. Douglas, William J. Brennan Jr., and Potter Stewart, held that the convicted man's last trial was prejudiced by improper questioning by the prosecution.

Accusation: No sooner was the majority decision announced than Frankfurter, seated next to Warren on the left, his gray-fringed head barely visible above the bench, began to bristle. In a written dissenting opinion, Frankfurter had called the prosecution's mistake a "harmless error," not prejudicial to Willie Lee Stewart. Now he spoke directly from the bench, accusing the majority of "plucking out" an isolated episode in Stewart's trial to prove its case.

The whole business, rapped out Frankfurter, was an "indefensible" example of judicial nit picking.

An angry red flush had crept up from Warren's collar as Frankfurter spoke. The Chief Justice cast one brief glance down at Frankfurter, then addressed the court.

"As I understand it," said Warren in restrained fury, "the purpose of reporting an opinion in the court is to inform the public and not for the purpose of degrading this court. I assume you that if any opinion had said those things [to us if Frankfurter had written his remarks into his formal dissent] I would have much to say myself, but unfortunately the record will not show it."

Warren: "Degrading this court"

"I'll leave it to the record," snapped back Frankfurter.

In the long history of the Supreme Court, there have been other sharp clashes between justices to mar the dignity of the nation's highest tribunal—a dignity ordinarily so great that some overwrought lawyers have fainted dead away when confronting the bench. In the 1930s the late Justice James C. McReynolds, well-known for his crustiness, once responded to a rebuke for tardiness by bellowing: "Tell Mr. Chief Justice Hughes that Mr. Justice McReynolds does not work for him." But very few such [illegible] have occurred on the [illegible] legal [illegible] was behind the W[illegible] Frankfurter fireworks.

Washington observers [illegible] the deal[illegible] with the court think that part of [illegible] lies in [illegible] differing temperaments of the two men. As a former politician, the 70-year-old Warren generates an air of great [illegible] being the center of adoring attention at Capital cocktail parties. Guests treat strangers as long-lost friends. Yet underneath, Warren is quick to anger. One friend says: "He's the picture of the nice, big, easygoing guy, but he really isn't. He's hot tempered."

At 78 the oldest member of the court, Frankfurter still plays his role as the super mind of the High Bench. He would rather forget the other guests and go off in a corner at a cocktail party and argue with somebody whose brains he respects, has even been known to jot down in advance notes on the arguments he plans to use in such exchanges. In a duel of wits Frankfurter used to expect no quarter and give none. But in recent years he has shown a noticeable tendency—in court and out—to be less patient with those who disagree with him.

"It isn't likely," says one lawyer who knows them both, "that these two would get along in any line of work that threw them together."

A far deeper division between Warren and Frankfurter is their poles-apart concepts of how the U.S. Supreme Court should interpret its role as the guardian of the Constitution.

As a former prosecutor (and attorney general) in California, Warren first came to the High Court with what seemed to be a main concern over how the prosecutions had presented its case, but more and more he began to be on the same side of decisions as the strong-minded Hugo Black, who champions the rights of the individual as paramount. Notably with the civil-rights cases and the controversial decisions easing restrictions of Communists, Warren and those who most often sided with him—Black, Douglas, and Brennan—came to be known as the court's "liberal" bloc.

Differences: Frankfurter used to be known as a flaming liberal himself when he was appointed by Franklin D. Roosevelt, but paradoxically in recent years has been labeled one of the court's "conservatives." In his view, the rights of the individual are important, but must be weighed against the government's best interest (as in the Communist cases). More than that, Frankfurter, an almost lifelong student of Supreme Court philosophy, has fretted at the trend of the court under Warren to involve itself increasingly in individual-rights cases, even including railroad accident and in-

Frankfurter: "Indefensible"

smarter claims. In Frankfurter's [illegible] these simply waste the Supreme Court's time and detract from its principal function: To decide large and important questions of constitutional law.

The upshot of these differences in philosophy has been a growing tendency of the court in recent years to render 5-4 decisions (at last week's blowup session, five of the six decisions reported were 5-4). Against the Warren bloc, Frankfurter usually musters on the conservative side Justices John Marshall Harlan, Tom Clark, and Charles E. Whittaker. In this 4-4 deadlock, the newest of the justices, Potter Stewart, more often than not functions as the man who tips the balance.

Who Shall Practice? For example, Justice Stewart joined with the conservatives in three of the 5-to-4 decisions last week, all involving qualifications for lawyers to practice in California, New York, and Illinois. The effect of the majority opinions was that a state may exclude from law practice an applicant who will not answer questions about Communism and may disbar a lawyer who will not respond to an inquiry into ambulance-chasing. Both the opinions (totaling 127 pages) and the courtroom statements made it clear that feelings among the justices ran deep.

Looking back, most Washington attorneys were inclined to put the blame on *both* Warren and Frankfurter for their newest public clash. It was perfectly proper and traditional, they said, for Frankfurter to comment on his written opinion from the bench (lawyers follow these remarks closely as a guideline to the court's thinking). But it was a breach of court etiquette, they said, for Frankfurter to upbraid those siding with the majority. What shocked the profession even more was that Chief Justice Warren permitted himself to strike back; under court etiquette, an oral opinion is not rebutted.

Perhaps something of the gravity of the situation was felt by Justice Frankfurter, who after all had started the affair by failing to leave his differences with a handshake at the door. For a long moment after the angry exchange, Frankfurter sat motionless, as if stunned by Warren's heated reaction. Then he leaned over to talk with the Chief Justice, and in another moment Warren's still-flushed face split in a benign, amiable smile. For the time being, and on the surface at least, the breach on the high bench was healed.

CHICAGO:

Gangland Gala

In the old days of the 20s and 30s, the only really tony events of the Chicago gangland social season were the flower-banked funerals for beer-barrel statesmen cut down in their prime. But the world moves and so does Chicago. Last week, the heirs of the hoodlum set turned out in pearl-gray formal suits and white on white shirts for the wedding of pretty, dark-haired Linda Lee Accardo, 20-year-old daughter of Capone Syndicate board chairman Anthony J. Accardo. Newsweek's Hal Bruno was there.

Reporters and photographers lunched in the street in front of St. Luke's Catholic Church, a yellow limestone structure in suburban River Forest, Ill. More photographers took station atop a supermarket across the way. At least a dozen detectives from the Chicago Police Department infiltrated the newsmen, noting faces and license numbers.

Accardo: The bride's father got sore

These were the hard-boiled.

There were also the curious, perhaps a hundred, who gaped at the 10-foot long mink stoles and the gleaming limousines of the arriving guests. They admired Phillip (Milwaukee Phil) Alderisio in sport jacket and black tieless shirt. They missed such notables as gamblers Sam (Teets) Battaglia and Albert (Obbie) Frabotta, who got in the back way. In Cinderella-story tones, they reminded [illegible] that the groom, 22-year-old [illegible] Palermo, was a mere U.S. soldier on leave from Fort Riley, Kans., while his father, plumbing contractor Neil Palermo, had installed the gold-plated bathroom fixtures in the 22-room Accardo mansion.

These were the sentimentalists, Chicago style.

Alarm: For all the onlookers, the first big sight was Jack (Jackie the Lackey) Cerone, Tony Accardo's No. 1 lieutenant, who strolled jauntily up the church steps in a pearly derby, striped pants and velvet-collared topcoat. Mrs. Cerone took alarm when a reporter pointed out her husband to a photographer.

"Take it easy," Cerone snapped. "Mind your business."

The bride's mother, Mrs. Clarice Accardo, was driven to the church in a red station wagon by her son-in-law, Baltimore Colts football player W. Palmer Pyle Jr., who eloped with Marie, another daughter, last spring. Pyle, a blond mountain who towered over most of the 200 guests, wore a gray suit and a fixed smile.

Tony Accardo himself smiled as he helped his daughter out of a chauffeured limousine. Taller than her father, she wore a long white gown and gold veil and carried a gold rosary and white prayer book. As the photographers went to work, Tony said: "Pretty good, boys, pretty good, eh?" But in another moment, scowling, he asked sarcastically: "Got enough?"

Everybody in the party was smiling, though, when they emerged after the 15-minute nuptial mass, which was celebrated by the Rev. William Chickering. Mrs. Accardo, in mother-of-the-bride fashion, kept asking: "Isn't she a beautiful bride?" Tony had a mild "no comment" to reporters' questions.

Delays: In a few seconds, however, Tony showed he was the tough heir to the Capone mantle. When the party's cars were delayed by photographers, he raged out of his limousine, surged up to the bride's car, yelled to the driver: "Come on, Frank, let's get going . . . What are you doing? Tying the kids up to get them crucified?"

Accardo's big scene took place several hours later at the Villa Venice, a restaurant-cabaret about 30 miles northwest of Chicago. Here gathered 400 guests, including all of those who didn't feel up to showing themselves in church. Tony laid on canapés, chicken, roast beef, and veal scallopine, had erected a 5-foot-tall, six-tiered cake (cost: $200), and drafted a crew of about 50 to serve the dinner.

Accardo probably couldn't be blamed for putting it on so lavishly—he might not be around in hoodlum society for a while. The Capone Syndicate chief, out on $25,000 appeal bond, is facing a six-year prison term for income tax evasion.

0-19 (Rev. 6-1-61)

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Fall Session Starts Monday

Supreme Court Faces Sit-In Case

By JACK STEELE
Scripps-Howard Staff Writer

The Supreme Court will open its fall session Monday with interest centering on a test cast involving the legality of "sit-in" demonstrations against segregation in the South.

The court, as it has been for several years, is confronted with a heavy calendar of civil rights cases—most of them brought by the National Association for the Advancement of Colored People to speed racial integration.

But it also may hand down some far-reaching decisions in other fields. Major tests involve the Government's anti-trust drive to restrict business mergers, union seniority rights and the power of the Federal courts to force state legislatures to redistrict.

REDS APPEAL

The first major ruling of the session may come Oct. 9 on a Communist Party petition.

This asks a re-hearing of the case in which the court earlier this year ordered the party to register under the Internal Security Act of 1950.

If the petition is denied, the Communist Party will have about 90 days to register or disband.

The court is scheduled to hear arguments in the "sit-in" test case starting about Oct. 16.

The NAACP has challenged the constitutionality of state laws under which anti-segregation demonstrators have been arrested in the South.

The case involves three groups of college students in Baton Rouge, La., who conducted "sit-ins" in lunch rooms in a bus station, department store and drug store.

They were arrested and convicted under a Louisiana law on grounds that their actions threatened to "alarm and disturb the public."

The NAACP has asked the Supreme Court to set forth "constitutional limitations" on such state prosecutions for engaging in "sit-ins."

NAACP briefs were prepared by its general counsel, Thurgood Marshall. But he will be unable to argue the case because of his recent nomination to the Court of Appeals.

The court's ruling may apply to hundreds of other "sit-in" cases as well as to the arrests of many "freedom riders" in several states.

APPORTIONMENT

The court's first hearing—starting Oct. 9—will be on a re-argument of the so-called Tennessee apportionment case.

This involves efforts to force the Tennessee legislature to re-district for the first time in 60 years and thus end the top-heavy representation of rural areas. A similar problem exists in many states.

A Tennessee group carried the case to the Supreme Court—with Justice Department backing—after it had been rebuffed by state courts and by a Federal district court.

This court held that the Federal courts were barred from entering such a "political thicket."

ANTI-TRUST

The Supreme Court also faces the first test of anti-trust laws enacted in 1950 to give the Government power to block business mergers which limit competition.

This case grows out of a 1956 merger of the Brown Shoe Co., a major manufacturer, with the G. R. Kinney Co., a retail shoe chain.

The company is appealing a District Court ruling barring the merger.

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The Washington Post and Times Herald
The Washington Daily News 17
The Evening Star
New York Herald Tribune
New York Journal-American
New York Mirror
New York Daily News
New York Post
The New York Times
The Worker
The New Leader
The Wall Street Journal
Date SEP 30 1961

Top labor case pending before the court involves the question of whether union members retain their seniority rights when a company moves its plant.

The issue was raised by employes of the Glidden Co., which moved a plant from Elmhurst, L. I., to Bethlehem, Pa.

The Second Circuit Court of Appeals (New York) held that the employes kept their seniority rights.

Many business groups, including the Chambers of Commerce of Ohio, Pennsylvania and California, have joined in an appeal.

The court also may rule on appeals in a half-dozen contempt of Congress cases, including that of Maurice A. Hutcheson, president of the Carpenters Union.

Also pending is an appeal by Dave Beck, former president of the Teamsters Union, who claims the grand jury which indicted him for embezzlement was "biased."

The Government contends no law requires that a grand jury be unbiased.

0-19 (Rev. 6-1-61)

Supreme Court Opening, Negroes' Appeals Pile Up

By The Associated Press

WASHINGTON.

The Supreme Court opens a new term tomorrow to face its biggest array of appeals by Negroes in cases ranging from arrests in sit-in demonstrations to theft of chicken feed.

Returning after a vacation that began June 19, the nine justices will hear three hours of argument soon in the court's first-time consideration of state prosecution of Negroes who refused to leave "white" lunch counters in the South.

Counsel for sixteen Negroes arrested in sit-in demonstrations in Baton Rouge, La., will argue that lunch counter segregation, when enforced by state authority, violates the U. S. Constitution's guarantee of due process of law.

The sixteen were sentenced to four months in jail under a Louisiana law that prohibits the commission of any act in such a manner as to disturb or alarm the public unreasonably.

Asks Early Reversal

Louisiana counsel say the law applies to everyone equally and was not designed, or applied, to enforce racial discrimination. To uphold the demonstrators, the state contends, would be "to trample the rights of all other citizens."

With numerous other sit-in and Freedom Rider cases likely to be appealed to the Supreme Court during its nine-month term, the Justice Department has asked for early reversal of the Baton Rouge convictions. A department brief said the convictions were utterly unsupported by evidence that the sixteen Negroes did anything to unreasonably disturb or alarm the public.

An indication of the difficulty of such problems was given the court in a brief filed by Attorney General T. W. Bruton of North Carolina. His brief asked the court to deny a hearing to Robert Williams, a Negro sentenced to thirty days in jail for a sit-in demonstration at a Monroe, N. C., drug store.

N. A. A. C. P. Appeal Up

Mr. Bruton's brief cited Mr. Williams' theory that the state, through its police, may not act in such a sit-in case. If such a theory is sound, Mr. Bruton argued, "then a storekeeper who does not wish to serve certain patrons will be left to his own devices."

The court has been asked to grant hearings in other sit-in cases from Durham and Raleigh, N. C., and from Richmond and Arlington, Va.

Arguments will be heard this fall on an appeal by the National Association for the Advancement of Colored People appeal for reversal of a Virginia Supreme Court decision. The Virginia court held the association engages in unlawful solicitation of legal business for its attorneys.

Also scheduled for fall argument is an appeal by Theodore R. Gibson, who refused to produce a list of members of the Miami branch of N. A. A. C. P. He was convicted of contempt, sentenced to six months in jail, and fined $1,200.

Cases Under Study

Arrests made in two privately operated amusement parks in Maryland when groups of Negroes and some white persons refused to leave; a suit by a Memphis Negro to compel desegregation of a restaurant in the Memphis Municipal Airport building; four appeals by Louisiana in its effort to put off integration in schools in various parts of the state.

An appeal from a Tennessee state court order to close Highlander Folk School, a racially integrated adult education center; an appeal from an Alabama state court which N. A. A. C. P. said halts its activities in that state; appeals by two Negro ministers against jail sentences for campaigning to desegregate buses in Birmingham, Ala.

[redacted] Negro faced $10 fine for refusing to move along on a sidewalk in Richmond during a demonstration in front of a department store; appeals by half a dozen Negroes facing execution in various states on convictions for slayings and rapes; an appeal by a former Georgia sheriff who got seventy days in jail for criticizing a judge's charge to a jury during an investigation of Negro bloc voting.

Lincoln School Issue

The chicken feed theft case was appealed from Forrest County, Miss., where Clyde Kennard, a Negro, was convicted of paying a Negro youth to steal the sacks of feed. He was sentenced to seven years in the state penitentiary.

A major racial case expected to be taken to the Supreme Court soon involves lower court findings that district boundaries of the Lincoln elementary school in New Rochelle, N. Y., had been gerrymandered to make the school's enrollment almost entirely Negro. The New Rohcelle School Board contends there has been no such tailoring of district lines and no discrimination against Negroes.

Another major racial case expected to reach the Supreme Court in its new term involves states shutting down of public schools to avoid integration.

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The Washington Post and Times Herald
The Washington Daily News
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New York Herald Tribune 1-6
New York Journal-American
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New York Daily News
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The New York Times
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The New Leader
The Wall Street Journal
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Pa. Censor Case Refused Review By Supreme Court

WASHINGTON.—The U. S. Supreme Court has refused to review the decision of the Pennsylvania Supreme Court which voided the state's new censorship-classification law.

The Pennsylvania Motion Picture Control Act was held to be void both under state and federal constitutions by the Court of Common Pleas, a decision upheld by the State Supreme Court. The state asked the U.S. high court to review the decision, arguing that other courts in other districts would be influenced by the reasoning of the state high court.

But, motion picture people argued that the Pennsylvania courts had declared the act invalid under the laws of Pennsylvania and that it was not necessary, therefore, to consider federal questions. The Supreme Court, in refusing to review the decision gave no reasons, as is usual in such cases. The effect is to permit decisions to stand without providing legal precedents such as actual Supreme Court decisions do.

The voided act sought to set up a three-man board which would have had the power to ban films outright or to prescribe them for showing only to patrons 17 or older. Films being shown in Pennsylvania for the first time would have had to have been submitted 48 hours before showing. Exhibitors would have been required to register with a fee.

The Dauphin County court found the act unconstitutional in that it restricted freedom of expression and communication and established prior restraint. It said standards were vague and indefinite, procedural and judicial safeguards were lacking and films were singled out from among other media. The Pennsylvania Supreme Court agreed with all this and found the registration fee to be a "tax upon free speech."

The court's refusal to review the law was looked upon by the Catholic Standard & Times as bringing an end to the "public demand that there be controls of some kind on movies in Pennsylvania." The official organ of the Catholic diocese in Philadelphia, in an editoral, called the decision a "hollow" victory and called the people of Pennsylvania "the losers." The editorial stated that the law was knocked down "not before the strong demands of constitutional law, but rather before the strong and unreasoning demands that censorship of every kind is inherently evil."

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Independent Film Journal
New York, New York
Nov. 18, 1961
Page 5

EX 114 REC 39 162-27585-A
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District Criminal Insanity Law: The Issue Before Supreme Court

By MIRIAM OTTENBERG
Star Staff Writer

The tortuous trail of the District's criminal insanity decisions has finallly led to the Supreme Court.

For more than seven years, the high court left undisturbed both the Durham rule broadening the criminal insanity defense and the law compelling hospital commitment for those acquitted via the Durham rule.

Ironically, although most of the controversy has swirled around the Durham rule, it's the commitment law that comes under attack in forthcoming arguments before the Supreme Court.

The Durham decision of 1954 provided that an accused cannot be held criminally responsible for his act if it was the product of a mental disease or defect.

The law, passed 14 months later, provided that an accused found not guilty by reason of insanity had to go to a mental hospital and stay there until the hospital superintendent certified that he had recovered his sanity and would no longer be a danger to himself and others. Under the 1955 law, the recommended release had to be approved by the court.

283 Sent to Hospital

From the passage of the law to June 30 of last year, 283 persons had been acquitted on insanity grounds and sent to the hospital. In the same period, 92 were released either conditionally or unconditionally.

The Washington Post and Times Herald
The Washington Daily News
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New York Herald Tribune
New York Journal-American
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New York Daily News
New York Post
The New York Times
The Worker
The New Leader
The Wall Street Journal
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In the beginning, complaints about the law were heard only sporadically because the time in hospital was usually much less than the time the accused would have had to spend in jail, had he not been acquitted on insanity grounds. For instance, Mrs. Katharine A. Haynes, who killed her husband's mistress, was released from St. Elizabeths Hospital 43 days after she was found not guilty on grounds of insanity. She was the first committed under the then new law.

Meanwhile, the Court of Appeals was busy interpreting, explaining, expanding and defending the Durham rule. A complicating factor was added in 1957 when St. Elizabeths decided that a "sociopathic personality" was a mental disorder. Thus, those previously classed as sane but antisocial were brought under the mental disease classification of the Durham rule.

More Acquittals Result

This seemed to open the door wider to acquittals via the insanity route and the parade of "sociopathic personalities" grew. There was rebellion within the Court of Appeals itself, pointed comments that no other court was following the Durham rule and abortive efforts on Capitol Hill to replace the Durham rule with legislation.

Progressively, however, insanity acquittals began to look less attractive to the accused. District Court judges, supported by the Court of Appeals, were increasingly disinclined to make a revolving door of St. Elizabeths.

The very defendant who was acquitted as a "sociopathic personality," John D. Leach, was involved in a landmark appellate decision on the question of getting released from the hospital after his acquittal. In a unanimous opinion, the court of appeals made a distinction between being sane and being safe.

"The phrase 'establishing his eligibility for release,' as applied to the special class of which Leach is a member," wrote Judge George T. Washington, "means something different from having one or more psychiatrists say simply that the individual is 'sane.' There must be freedom from such abnormal mental condition as would make the individual dangerous to himself or the community in the reasonably foreseeable future."

Court Declines Review

The Supreme Court refused to review the ruling in the Leach case in 1959, thereby declining a bid to look at the law which it has now agreed to examine.

After the Leach case, the Court of Appeals took on a series of cases challenging the commitment law as a growing number of the acquitted on insanity grounds realized it was easier to get into St. Elizabeths than to get out. Where the hospital superintendent refused to certify them for release, they were free to seek release via habeas corpus proceedings. That's where most of the tests came.

The Court of Appeals standard emerging from these tests provides that the one seeking release must show that he has recovered his sanity and that the recovery has reached the point where he has no abnormal mental condition which in the reasonably foreseeable future would endanger him or the public if he were released.

In the same series of decisions,

[redacted] Appeals gave [redacted] answers to two of the questions now raised in the Supreme Court. In one case, the appellate court ruled that even a proclivity for writing bad checks was enough to make a man dangerous.

Constitutional Rights

In another case, the appellate court rejected the contention—advanced by the American Civil Liberties Union—that automatic commitment to a mental hospital after acquittal on grounds of insanity violates Constitutional rights.

The case now before the Supreme Court involves a bad check writer and again the American Civil Liberties Union, this time as "friend of the court," is claiming that the mandatory commitment law is unconstitutional.

The man in the case is Frederick C. Lynch, 42-year-old former Air Force lieutenant colonel who got into trouble for writing bad checks. On the day he pleaded not guilty in November, 1959, he was sent to District General Hospital for a mental examination.

A month later, the hospital reported that he was mentally incompetent to stand trial but on December 28, 1959, the hospital said he had shown some improvement and now appeared able to understand the charges against him. At the same time, however, the hospital reported that Lynch was suffering from a manic depressive psychosis at the time of the crime and that "such an illness would particularly affect his judgment in regard to financial matters, so that the crime charged would be a product of this mental disease."

The report thus spelled out the insanity defense under the Durham rule, but when Lynch came to trial his court-appointed counsel chose not to use this defense. Instead, he advised his client to plead guilty. Chief Judge John Lewis Smith, jr., of Municipal Court refused to accept the guilty plea. After trying the case, he found Lynch not guilty by reason of insanity and ordered him committed to St. Elizabeths.

Habeas Corpus Proceeding

After six months in the hospital, Lynch filed a habeas corpus petition attacking the legality of his confinement on the grounds that Municipal Court's refusal to allow him to plead guilty deprived him of his liberty without due process of law, that an "impossible burden" had been placed on him to rebut the psychiatric testimony, that his commitment violated the safeguards of the civil commitment law and that the 1955 mandatory commitment law was unconstitutional.

[redacted] District Court [redacted] the habeas corpus [redacted] but on his belief that Municipal Court did not have jurisdiction to commit Lynch to the hospital.

The Court of Appeals disagreed. In a 6-3 decision, the appellate court ruled that Judge Smith's action was not only "far from an abuse of discretion but also it would seem affirmatively to have been the best possible decision, if not the only just one."

While the appeal was pending, Lynch was given a conditional release from the hospital, but he was ordered back to the hospital in April, 1961, after the court was told that Lynch created a disturbance in a Connecticut avenue restaurant by holding a mirror in front of the faces of women diners and making disparaging remarks about their looks. The court was also advised that in a two-week period, Lynch had written 32 bad checks.

Shortly after Lynch was returned to the hospital, his attorneys petitioned the Supreme Court to review his case and the American Civil Liberties Union came in as "friend of the court."

Decisions Are Attacked

The contentions of Lynch and the American Civil Liberties Union in effect attack all the later decisions of the Court of Appeals dealing with commitment to the hospital and release from it. They contend that only the defendant can raise the insanity issue, not the judge or presecutor; that those accused of nonviolent crimes like check-writing should not be covered by the mandatory commitment law and that those found not guilty by reason of insanity should be given a pre-commitment hearing to determine their present mental condition.

The Government disagrees on all these arguments, citing Court of Appeals decisions and the intent of Congress to strike a balance between the rights of the individual and the rights of society. In its brief, the Government points out that in more than 80 opinions since the Durham case the court here has developed a body of law to achieve the balance.

The Government brief makes

distinction between civil commitments and those under the criminal insanity law. The need for prompt confinement pending observation of the patient's mental condition the Government argues, is far more compelling in a case where the individual has committed anti-social acts and may very well continue to do so unless treated.

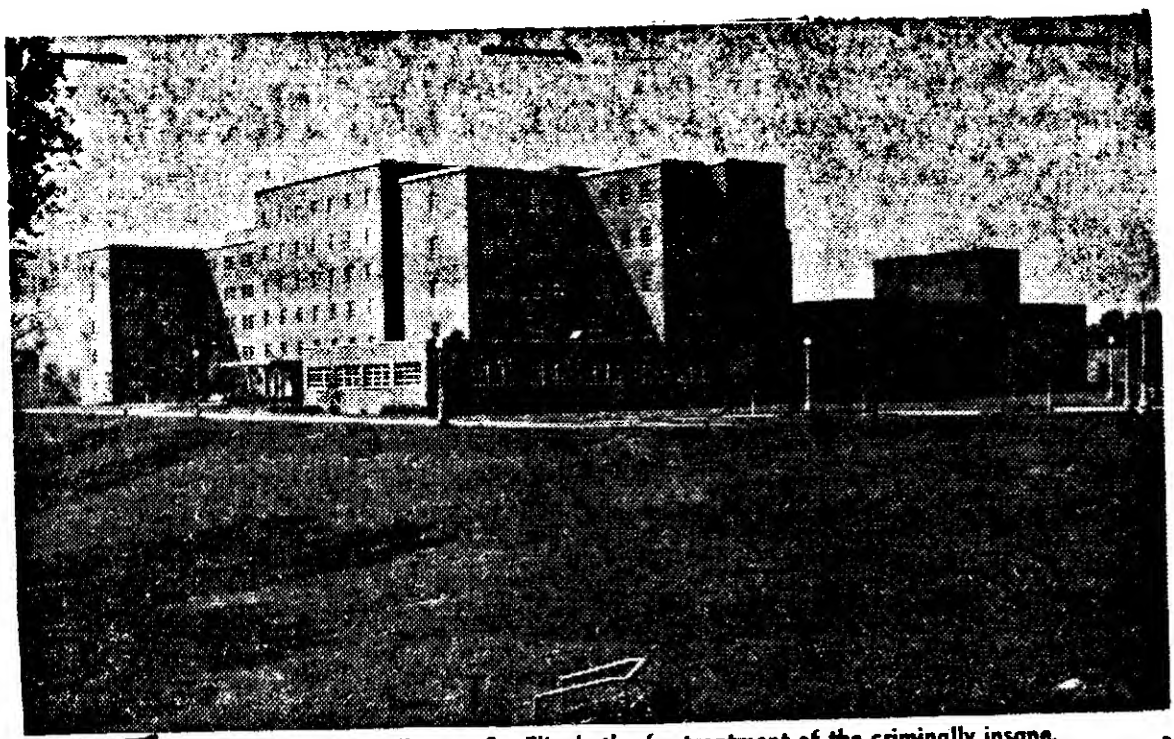
Contending that a pre-commitment hearing after a verdict of acquittal on insanity grounds is not required on Constitutional grounds, the Government brief points out since 1800, judges have been ordering those acquitted on grounds of insanity to be held in custody as dangerous. Implicit in the determination of not guilty by reason of insanity, the Government argues, is the finding that the defendant actually committed the acts with which he was charged.

Expert Testimony

To underline the difference between the mental patient who goes through civil procedure and the one who goes through criminal courts to St. Elizabeths, the Government cites one of the many experts who testified in Congress for the mandatory commitment law.

"A man who is in a hospital because he has committed a crime for which he has been exculpated," said Dr. Manfred S. Guttmacher, one of the Nation's leading authorities on criminal insanity, "is a different individual from the individual who has been sent there as a mental case."

That's one of the major points the Government will argue when the Supreme Court hears the case later this month.



The John Howard pavillion at St. Elizabeths for treatment of the criminally insane.

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Supreme Court Decision Draws Scathing Dissent

By The Associated Press

WASHINGTON.

A 6-to-3 Supreme Court decision to let a hardened criminal leave Alcatraz Prison to seek a lighter sentence drew an unusually scathing denunciation from the minority yesterday.

Justice Tom C. Clark, speaking for the dissenters, said, "Once the opinion goes the round of our prisons, we will likely be plagued with a rash of such spurious applications."

The decision, he said, is an invitation to prisoners "always seeking a sojourn from their keepers to swear to 'Munchausen' tales when self-interest readily leads to self-deception." "Munchausen" referred to the eighteenth Century German spinner of wild tales, Baron Karl von Munchausen.

Claims Excessive Sentence

The decision will permit John Machibroda to return to Toledo, Ohio, to present his argument that his forty-year sentence for robbing two Federally insured banks in Ohio as excessive. Machibroda, in appealing to the Supreme Court, said his guilty plea was not voluntary but was induced by a promise of leniency by an assistant U. S. Attorney.

He complained also that he was coerced into concealing the situation from the sentencing court because the prosecutor threatened him in connection with other offenses.

Machibroda was sentenced May 23, 1956, and he did not appeal for re-sentencing until about three years later. The sentencing court denied the request on grounds that his story was false.

Justice Potter's View

Justice Potter Stewart, in the majority opinion, said:

"There will always be marginal cases, and this case is not far from the line. But the specific and detailed factual assertions of the petitioner, while improbable, cannot at this juncture be said to be incredible. If the allegations are true, the petitioner is clearly entitled to relief."

Justice Stewart said he could not agree with the government that a hearing would be futile because of the apparent lack of any eyewitnesses to the occurrences alleged except for Machibroda and the U. S. Attorney.

Other Dissenters

Justice Clark's dissent, joined in by Justices Felix Frankfurter and John M. Harlan, said an examination of the files and records in the case reveal that Machibroda "clearly outspoke himself."

"If a deal had been made," Justice Clark said, "it borders on the incredible that petitioner would sit quietly in prison over two and one-half years after the prosecutor had reneged on his promise.

"Alcatraz is a maximum-security institution housing dangerous incorrigibles and, petitioner wants a change of scenery, the court has left the door ajar for a trip from California to Ohio along with the accompanying hazards."

The Washington Post and Times Herald
The Washington Daily News
The Evening Star
New York Herald Tribune
New York Journal-American
New York Mirror
New York Daily News
New York Post
The New York Times
The Worker
The New Leader
The Wall Street Journal
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Don't Make a Move...

A House Judiciary Subcommittee comes up a jingling echo from an almost forgotten past. HR-3 belongs to the era when an excited minority in Congress was trying to spank the Supreme Court for its decisions outlawing segregation in the public schools and requiring due process of law in the prosecution of alleged Communists. The climax of this controversy was reached about five years ago. Cool heads on Capitol Hill have long since discarded the idea of disciplining the Court for its alleged ultra-liberal opinions, but HR-3 bobs up again presumably as a reminder to the Court that it can't make a move without reckoning with Smith.

In some respects HR-3 is the most mischievous of all the anti-Court measures to be advanced in recent years, because no one knows precisely what it means. The bill undertakes to instruct the courts on their duties. It would forbid the courts to construe any act of Congress as occupying the field in which it operates, to the exclusion of state laws, unless Congress had expressly stated such an intent or the state and national acts were so incompatible that they could not stand together.

It is possible, of course, that in practice HR-3 would mean little or nothing. The courts make a practice of reconciling Federal and state acts unless they believe those acts to be in conflict. The overpowering case against this wide-swinging prohibition that Representative Smith would lay down for the courts is that it would be a blow in the dark. The argument for it seems to be about the same as the argument for tossing a monkey wrench into a delicate piece of machinery in order to see what would happen.

Of course, the Supreme Court is not infallible. It may have misconstrued the intent of Congress when it interpreted the Smith Act as a bar to state legislation similarly designed to penalize subversion. But Congress can always modify the language of a statute that may have been misconstrued without pulling out a foundation stone from the existing legal structure. Fortunately, the country can count on the Senate and the President to prevent HR-3 from becoming law, even if the House should pass it once more. But the fact that a subcommittee has reverted to a nuisance bill of this kind at a time when the congressional calendar is loaded with important legislation is disappointing.

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Supreme Court

The Washington Post and Times Herald A-17
The Washington Daily News
The Evening Star
New York Herald Tribune
New York Journal-American
New York Mirror
New York Daily News
New York Post
The New York Times
The Worker
The New Leader
The Wall Street Journal
The National Observer
Date MAR 6 1962

REC- 29 62-27595-A
NOT RECORDED
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These Days

The Supreme Court

by George E. Sokolsky

I HAVE a rather remarkable letter from a reader in Phoenix, Ariz., which explains to me why the teaching of civics should be restored to the public schools. The writer says:

Sokolsky

"It is my belief that the duty of the Supreme Court, when a case comes before it, is to decide it on the basis of law or whether the Constitution has been violated. They should be able lawyers, know the law or where to find it, and be thoroughly familiar with the Constitution. They should not be politicians.

"Frequently cases are decided on a 5-to-4 basis. One side will claim some law or the Constitution has been violated. How can that be possible? If they all know what the Constitution says, how can a decision be other than unanimous, one way or the other?"

The questions raised here are only difficult to answer because the writer apparently cannot envisage the Supreme Court, which consists of nine men appointed for life, all of whom are lawyers and know the Constitution. But the Constitution, like the Ten Commandments, is a [illegible] drawn document which from time to time requires interpretation.

FOR INSTANCE, we have moved into a wholly new relationship between government and production arising because many industries are forced to unite to produce the kind of goods that the Government buys, such as missiles, rockets, satellites, etc. These cannot be made by small enterprises or by a single company. Some 2000 American industries played a role in the Manhattan Project which produced the atom bomb. The application of the antitrust laws to production will have to be reinterpreted to meet these conditions.

Or to give another example: villages and even small towns are being deserted and more and more people are moving into large cities. The urbanization of our population has raised many questions of interracial relations in a country where there are about 19 million Negroes, many of whom have in recent years moved to large cities. Some have fought in two wars abroad. Others have been to college. They have raised questions as to their rights under the Constitution which the Supreme Court had to hear.

A 5-to-4 decision is in no manner a violation of propriety; it simply means that nine trained lawyers of distinction have reached different conclusions in their interpretation of the same clause in the Constitution as applied to a current situation brought before them.

THIS KIND of correspondence is not unusual these days. I receive quite a few letters which attack the Supreme Court, the way the Communists used to. The attack is generally on Chief Justice Earl Warren, who is being held responsible for the desegregation decision, although nine justices were responsible for it.

The attack on political judges is usually an attack on Chief Justice Warren, although Chief Justice Taft and Chief Justice Hughes were politicians before they found their places on the bench. Hugo Black was a Senator and had, in his younger years, been a member of the Ku Klux Klan; yet today he is regarded as the most liberal judge on the bench. Justice Felix Frankfurter was a professor and was regarded as a radical; today he is probably the most correctly oriented and conservative member of the Court.

In a word, my correspondent ought to take a trip to Washington to see the Supreme Court at work and then he would understand what a magnificent institution it has been throughout our history. And he ought to read a good biography of Chief Justice John Marshall to learn how the Court came to be what it is.

(Rev. 3-2-62)

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A Supreme Court

Bombshell— City Voters and States' Rights

REPRESENTATION? — Under Georgia's county-unit law, for example, which was enacted in 1917 by a rural dominated legislature, one state representative from Fulton (Atlanta) County represents 92,724 residents. One representative from tiny Echols County represents 938 persons—a ratio of approximately 99 to one.

THE 6-2 DECISION

By Don Irwin
A Staff Correspondent

WASHINGTON.

The Supreme Court ruled yesterday in a potentially sweeping 6-to-2 decision that a voters' suit to force reapportionment of state legislative districts may properly be heard in a Federal court.

The decision sustained the validity of an attempt by a group of urban voters in Tennessee to sue for revision of the state's legislative district lines. These boundaries of the district from which state Senators and Representatives are chosen have been unchanged since 1901, despite a provision of the state constitution requiring reapportionment every decade.

Although the court's majority recommended nothing except that the case be remanded to a three-judge court in Nashville, its finding upset precedent and practice under which Federal courts have found redistricting disputes to be "political disputes" outside their jurisdiction.

The majority was accused in a vigorous dissent by Justice Felix Frankfurter of reversing "a uniform course of decision established by a dozen cases." Terming the prevailing opinion an assertion of "destructively novel judicial power," he said it disregards "inherent limits in the exercise of the court's judicial power."

"It may well impair the court's position as the ultimate organ of 'the supreme law of the land' in that vast range of legal problems, often strongly entangled in popular feeling, on which this court must pronounce," Justice Frankfurter wrote.

Warning that the court's authority rests on "public confidence in its moral sanction," Justice Frankfurter said this feeling "must be nourished by the court's complete detachment, in fact and appearance, from political entanglements."

The contentious issues raised by the case produced an aggregate of 165 pages of opinions and appendices. The

Supreme Court

The Washington Post and Times Herald
The Washington Daily News
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The New York Times
The Worker
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The Wall Street Journal
The National Observer

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William J. [illegible] ... pages of text and five of appendix. It was backed with concurrences by Justices William O. Douglas (19 pages); Tom C. Clark (15 pages, and Felix [illegible] (three pages). Supporting Justice Frankfurter's 24-page dissent was a 19-page expression of individual views by Justice John M. Harlan.

No opinions were written by two justices who concurred in the majority view: Chief Justice Earl Warren and associate Justice Hugo L. Black. Justice Charles E. Whittaker, he has been ill, did not participate in the decision.

The basic decision upset by yesterday's case was Colegrove vs. Green, a 1946 Illinois case under which the court declined by an unusual 3-3-1 split decision to intervene in a redistricting dispute. In that case, Justice Frankfurter wrote the prevailing opinion, which held that the courts "ought not to enter this political thicket," but should leave redistricting problems to state legislatures or to Congress.

In breaking from this position yesterday, Justice Brennan held basically that courts have constitutional authority in the field and that the issues raised by the Tennessee case are "justiciable"; that is, subject to settlement by court decision.

As a prelude to this finding, Justice Brennan recited the substance of the complaint brought to the high court two years ago on an appeal by residents of five urban counties in Tennessee. They contend that the natural growth and shifting in the population have drastically diluted urban representation under an apportionment which was weighted for rural voters when it took effect 61 years ago.

Recalling that the district court had dismissed the complaint on the ground that it lacked jurisdiction and that no claim had been stated "on which relief can be granted," Justice Brennan denied the court's "impotence" on either ground.

[illegible] today [illegible] that the court possessed jurisdiction of the subject matter; (2) that a justiciable cause of action is stated upon which appellants would be entitled to appropriate relief; and (3) [illegible] challenge the Tennessee apportionment statutes," Justice Brennan wrote.

"Beyond noting that we have no cause at this stage to doubt the district court will be able to fashion relief if violations of constitutional rights are found, it is improper now to consider what remedy would be most appropriate if appellants prevail at the trial."

The Justice Department, which intervened for the plaintiffs when the case was argued last year before the high court, has suggested a number of alternate courses that might be followed if the plaintiffs win. They vary from a "judicial admonition" to the Tennessee Legislature on up to court orders that would, in effect redistrict the state.

In stating the Supreme Court's jurisdiction, Justice Brennan cited the provision in Article III, Section 2 of the Constitution giving the Federal judiciary power extending to "all cases, in law and equity, arising under this Constitution, the laws of the United States and treaties . . ."

Justice Brennan, Author of the Majority Opinion

Justice Frankfurter, Author of Two Dissents

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National Political Correspondent

The Supreme Court's decision in the Tennessee case will affect the future makeup of Congress and many state Legislatures.

Ultimately it will give cities and metropolitan areas control over state governments, and reduce to minority status the power of rural areas which have dominated practically all Legislatures from coast-to-coast.

Among other things the historic decision also probably dooms the traditional practice of gerrymandering Congressional districts.

Although Congressional apportionment was not alluded to directly in the decision, knowledgeable attorneys and officials in Washington told the Herald Tribune disproportionate representation resulting from gerrymandering is certain to be a major part of the nation-wide reforms sparked by the Tennessee case.

Thus all in all, the high court's pronouncement yesterday is likely to have a greater impact on American politics than any prior decision in this century.

City dwellers as well as officials of urban areas hailed the decision, describing it as an opportunity to gain equitable representation in legislative bodies. The American Municipal Association described the ruling as probably "more significant than anything from the court in a century."

As a technical matter, the decision yesterday dealt specifically with the question of "fair representation" in state Legislatures.

But the broad sweep of its message may well add up to this:

Federal courts now are given the authority to rule on whether states are fairly and equitably apportioned so that the membership of lawmaking bodies is truly representative.

Furthermore, if the courts decide there are inequities, they may direct state Legislatures to take corrective action.

As has been true with the Supreme Court's 1954 decision on school integration, the process of implementing the new "law of the land" laid down yesterday could be tedious and may take time.

In other words, while the high court has launched the funeral procession for rural control of states, the cortege has some crazy-quilt streets to negotiate en route to the cemetery. But it is on the way—and the burial is sure to come.

Obviously, from their outcries against the decision, some people in Washington saw it as the death knell for "states rights"—and states.

[illegible] Sen. [illegible], D., Ga., declared for instance that it was "the finest example of the constitutional operation of power with [illegible] is based. . . ."

Questioning the legal wisdom and good judgment of the concurring Justices, the Georgia Senator, a lawyer himself, added: "It is beyond the comprehension of anyone who has ever been exposed to a law book how a court at any level could compel a state Legislature to take or not take action on any question."

Contrary views were offered by Charles S. Rhyne, victorious attorney in the Tennessee case; Sen. Estes Kefauver, D., Tenn.; and others.

Sees States Revitalized

Sen. Kefauver, also a lawyer, insisted the decision "will undoubtedly be a landmark in the implementation of the meaning of our Constitution."

Mr. Rhyne, former president of the American Bar Association and currently chairman of the association's International Committee on World Peace Through Law, said the effect of the decision will be to revitalize states. Thereby it actually should reverse the trend whereby local governments have been rushing to Washington for solutions to problems that rural-dominated Legislatures refused to recognize and cope with, he added.

The Tennessee case was started by a group of citizens who complained their Constitutional rights were being trampled because the Legislature refused to reapportion its membership to keep pace with the switch in population from farms to cities.

In effect, one resident of rural Moore County now has as much representation in the Tennessee House of Representatives as 200 residents of Memphis.

Compared with some other states, however, the situation in Tennessee was not [illegible] at all.

Take California, for instance. In that state, it takes 48 citizens of Los Angeles County to equal one from a rural northern county when it comes to power in the state [illegible]

[illegible] Texas, [illegible] of the population [illegible] a city [illegible] would [illegible] [illegible] and [illegible] [illegible]

While disproportionate representation in one form or another has become practically a way of political life in [illegible] states, the prime example for generations has been [illegible] correct, old-line-Yankee [illegible] ment.

The Granite State [illegible] bothered to reapportion since [illegible] joined the union some 167 years ago. Thus the community of Victory (population 24) has as much representation in the State House of Representatives today as the city of Burlington (population 35,531).

In most states over the years the rural majorities running the Legislatures retained control just by holding fast. They simply turned deaf ears to the pleas of city folk for a fairer deal, and refused to reapportion merely because every census showed the city populations larger and larger with people while the farm country got smaller and smaller.

But Georgia operated a bit differently. Its ruling clique from the farm country kept the burgeoning metropolises of Atlanta, Savannah and Augusta in their place with a "county unit system" which allocated each county a "unit" of votes on the basis of a formula heavily stacked in favor of rural counties.

Rash of Actions

The Tennessee case is sure to inspire some aggrieved citizens of Burlington to seek relief in the Federal courts, now.

In fact, a rash of actions is expected across the land.

Some were started yesterday within minutes of the high court's decision.

It also became immediately apparent that some states will seek to avert judicial compulsion by acting quickly to reapportion.

0-20 (Rev. 3-2-62)

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UPI-68
(COURT)
WASHINGTON--THE SUPREME COURT, SITTING TEMPORARILY WITH EIGHT JUSTICES, TODAY PUT OFF ACTIONS ON ABOUT A DOZEN CASES UNTIL NEXT FALL, PRESUMABLY BECAUSE IT IS EVENLY DIVIDED ON THEM.
AMONG THOSE SHELVED FOR THE PRESENT TERM WERE CASES FROM VIRGINIA AND FLORIDA INVOLVING STATE ACTIONS AGAINST THE NAACP.
THE COURT WAS REDUCED TO A MEMBERSHIP OF EIGHT BY THE RESIGNATION OF JUSTICE CHARLES EVANS WHITTAKER BECAUSE OF ILL HEALTH. HIS SUCCESSOR--BYRON WHITE--WILL NOT TAKE HIS SEAT UNTIL CONFIRMED BY THE SENATE.
CHIEF JUSTICE EARL WARREN FORMALLY INFORMED THE COURT OF WHITTAKER'S RETIREMENT AT TODAY'S SESSION. HE EXPRESSED THE REGRETS OF THE JUSTICES AND VOICED HOPE THAT WHITTAKER WOULD MAKE A COMPLETE RECOVERY.
AS THE JUSTICES FILED IN TODAY TO HAND DOWN DECISIONS, JUSTICE POTTER STEWART MOVED UP ONE NOTCH NEARER WARREN'S RIGHT, ASSUMING THE POSITION PREVIOUSLY HELD BY WHITTAKER.
ONE OF THE CASES POSTPONED UNTIL THE NEXT TERM IN THE FALL WAS A VIRGINIA APPEAL BROUGHT BY THE NAACP CHALLENGING A STATE STATUTE REGULATING THE PRACTICE OF LAW. STATE COURTS INTERPRETED THE LAW TO MEAN THAT THE NAACP IS ENGAGED "IN THE UNLAWFUL SOLICITATION OF LEGAL BUSINESS.

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51 APR 20 1962 WASHINGTON CAPITAL NEWS SERVICE

THE ASSOCIATION SAID THE STATE WAS TRYING TO HAMSTRING NAACP WORK IN SCHOOL SEGREGATION CASES.

IN THE FLORIDA CASE, THE REV. THEODORE R. GIBSON OF MIAMI REFUSED TO BRING ASSOCIATION RECORDS WITH HIM TO THE LEGISLATIVE INVESTIGATION COMMITTEE IN TALLAHASSEE IN 1959. HE WAS CONVICTED OF CONTEMPT.

GIBSON, WHO IS RECTOR OF CHRIST PROTESTANT EPISCOPAL CHURCH, IS PRESIDENT OF THE NAACP'S MIAMI BRANCH.

OTHER CASES PUT OVER INCLUDED:

--ACTION BY A LOWER COURT STRIKING DOWN THE PART OF THE FEDERAL ANTI-MONOPOLY LAW WHICH BARS SELLING "AT UNREASONABLY LOW PRICES FOR THE PURPOSE OF DESTROYING COMPETITION."

--THE APPEAL OF CHARLES TOWNSEND OF CHICAGO, UNDER DEATH SENTENCE FOR THE FATAL BEATING OF A 43-YEAR-OLD STEELWORKERS IN 1953.

--THE ISSUE OF WHETHER FEDERAL BANKING LAW GOVERNS THE LOCATION OF CIVIL TRIALS OF NATIONAL BANKS IN STATE COURTS.

--A CHALLENGE TO A HEMPSTEAD, N.Y., ORDINANCE REGULATING GRAVEL EXCAVATION BY A COMPANY WHICH HAS BEEN WORKING A CERTAIN AREA FOR 35 YEARS.

--THE APPEAL OF OHIO TEAMSTER LEADER WILLIAM PRESSER, CONVICTED OF OBSTRUCTING THE WORK OF THE SENATE RACKETS COMMITTEE.

--THE ISSUE OF WHETHER LEGAL EXPENSES INCURRED IN A DIVORCE PROCEEDING ARE DEDUCTIBLE, FOR INCOME TAX PURPOSES, AS EXPENSES PAID IN THE CONSERVATION OF INCOME-PRODUCING PROPERTY.

--A CHALLENGE TO A LOUISIANA SALES TAX.

SEVERAL OF THE CASES WERE ARGUED DURING THE PAST FEW WEEKS.

IN OTHER ACTIONS TODAY, THE COURT:

--LET STAND A WASHINGTON STATE COURT RULING NULLIFYING THE STATE'S 1957 ANTI-DISCRIMINATION LAW FOR PUBLICLY ASSISTED HOUSING.

--REFUSED TO GRANT A HEARING TO PAUL DE LUCIA, A CAPONE GANG FIGURE KNOWN AS PAUL "THE WAITER" RICCA WHO HAS BEEN ORDERED DEPORTED TO ITALY.

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UPI-88

Supreme Court

(STATES RIGHTS)

WASHINGTON--THE HOUSE JUDICIARY COMMITTEE TODAY APPROVED A BILL THAT WOULD KEEP FEDERAL LAWS FROM WIPING OUT STATE LAWS IN THE SAME FIELD UNLESS THEY ARE IN COMPLETE CONFLICT.

THE BILL, SPONSORED BY CHAIRMAN HOWARD W. SMITH, D-VA., OF THE HOUSE RULES COMMITTEE, HAS BEEN APPROVED BY THE JUDICIARY COMMITTEE AND THE HOUSE SEVERAL TIMES IN PAST YEARS.

BUT IT HAS NEVER MADE IT THROUGH BOTH HOUSES. SUPPORTERS DESCRIBE IT AS A NEEDED PROVISION TO PROTECT THE RIGHTS OF THE STATES.

CHAIRMAN EMANUEL CELLER, D-N.Y., OF THE JUDICIARY COMMITTEE SAID THE VOTE ON THE BILL WAS "CLOSE, VERY CLOSE." HE WOULD NOT SAY WHAT THE DIVISION WAS IN THE COMMITTEE'S CLOSED MEETING.

LEGAL EXPERTS HAVE DISAGREED ABOUT THE EFFECT OF THE SMITH BILL IF IT BECAME LAW. SOME ARGUE THAT IT WOULD HAVE LITTLE IMPACT, BUT OTHERS FEEL IT MIGHT INVALIDATE ALL FEDERAL LAWS IN THE LABOR-MANAGEMENT RELATIONS AND OTHER FIELDS.

AT PRESENT, STATE LAWS NEED NOT BE IN CONFLICT WITH FEDERAL LEGISLATION IN THE SAME FIELD TO BECOME INOPERATIVE. IN A NUMBER OF CASES, COURTS HAVE HELD THAT THE PASSAGE OF ANY FEDERAL LAW IN A GIVEN FIELD PRECLUDES STATE LEGISLATURES FROM TAKING ACTION ON THE SAME SUBJECT.

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199 JUN 4 1962

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WASHINGTON CAPITAL NEWS SERVICE

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Reginald Dilli Dies; Retired High Court Aide

Reginald C. Dilli, 64, retired deputy clerk of the Supreme Court, died yesterday at Carroll County General Hospital, Westminister, Md., of injuries received in an automobile accident a week ago.

Mr. Dilli, who began working for the Supreme Court as a 14-year-old page boy, had served under six Chief Justices.

He was in charge of the docket before his retirement in 1956.

Mr. Dilli, a long-time Washington resident, moved to Waynesboro, Pa., when he retired.

He attended every opening of the court's term since his employment as a page, said court aides. Following his retirement, he made special trips from Waynesboro to be present at each initial session.

Serving as clerk for five years, he entered the clerk's office in 1916, and served as a deputy clerk from 1927 until his retirement.

Mr. Dilli was a member of the Columbia Masonic Lodge in Washington, the Waynesboro and Harrisburg Shrine, the Elk and Rotary Club and the Waynesboro Presbyterian Church.

He leaves his wife, Mrs. Helen Sherman Dilli, and two daughters: Mrs. Keith Kelly of Encino, Calif., and Mrs. Harry Hughes of Port-Lyautey, French Morocco, and five grandchildren.

REGINALD C. DILLI
(1945 Photo)

Funeral services will be held at 3 p.m. at the Grove Funeral Home, Waynesboro. Burial will be in the Burns Hill Cemetery there.

Mrs. Dilli was reported in serious condition with head injuries at University Hospital, Baltimore.

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NOT RECORDED
140 JUL 9 1962

The Washington Post and Times Herald
The Washington Daily News
The Evening Star
New York Herald Tribune
New York Journal-American
New York Mirror
New York Daily News
New York Post
The New York Times
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The Wall Street Journal
The National Observer
Date JUL 1 1962

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3 Justices Criticize Comments by Stewart

Three Supreme Court justices today criticized Justice Stewart for what they called his "wholly unnecessary comments" in the course of upholding a conviction.

The case involved Harry Lanza, who was convicted of refusing to answer questions before a New York State legislative committee investigating possible corruption in the State parole system.

Lanza claimed that he could not be constitutionally punished for refusing to answer the committee's questions because a conversation he had with his brother in jail had been electronically intercepted and recorded by State officials and a transcript of the conversation had furnished the basis of the committee's questions.

Justice Stewart, writing the unanimous opinion, said that the record showed that at least two of the questions which the committee asked were not related to the intercepted conversation. Therefore, he said, the Supreme Court did not have to go into the constitutional question of whether the use of electronic eavesdropping in this case violated Lanza's rights.

Makes Comments, However

Justice Stewart commented, however, that it was "at best a novel argument" to say that a public jail was the equivalent of a man's house or that it is a place where he can claim constitutional immunity from unreasonable search or seizure, as electronic eavesdropping under certain circumstances could be.

It is obvious, he said, that a jail shares none of the attributes of privacy of a home, an automobile, an office or a hotel room. In prison, he said, official surveillance has traditionally been the order of the day.

These comments drew fire from Justice Stewart's colleagues.

Chief Justice Warren said that in his opinion comments like Justice Stewart's can lead only to misunderstanding and confusion in future cases.

Expressing regret that Justice Stewart, in writing the unanimous opinion, departed from the usual practice of refusing to reach for constitutional questions not necessary for decision, the Chief Justice wrote:

"What makes this court's action singularly unfortunate is that the State courts, State officials and the people of New York State have uniformly condemned the eavesdropping in this case as deplorable."

Cites Freed Prisoner

The Chief Justice quoted reports that a New York trial court judge released a prisoner without bail so he could consult his attorney, the judge not feeling confident after the [illegible] incident that there was any jail in the State where the prisoner and his lawyer could be secure against electronic eavesdropping.

"It seems to me," concluded the Chief Justice, "that when this court puts its imprimatur upon conduct so universally reproached by every branch of the government of the State in which the case arose, we invite official lawlessness which, in the long run, can be far more harmful to our society than individual contumacy."

Justice Brennan protested what he called the court's "gratuitous exposition" of grave constitutional issues not before the tribunal.

"The tenor of the court's wholly unnecessary comments," Justice Brennan wrote, "is sufficiently ominous to justify the strongest emphasis that of the abbreviated court of seven who participated in this decision, fewer than five will even intimate views that the constitutional protections against invasion of privacy do not operate for the benefit of persons —whether inmates or visitors— inside a jail. . . ."

Justice Brennan, whom the Chief Justice and Justice Douglas joined, referred to the fact that neither Justice Frankfurter, who is ill, nor Justice White, who came on the bench after the case was argued, took part in the decision.

FOR CLIPPING
DATED 6-4-62
FROM Evening Star
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The Washington Post and Times Herald
The Washington Daily News
The Evening Star A9
New York Herald Tribune
New York Journal-American
New York Mirror
New York Daily News
New York Post
The New York Times
The Worker
The New Leader
The Wall Street Journal
The National Observer
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30 JUN 15 1962

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199 JUN 13 1962

JUN 4 1962

Supreme Court Upsets Conviction of 'Riders'

Votes 7-1 Without Hearing Arguments To Clear 6 Sentenced at Shreveport

By MIRIAM OTTENBERG
Star Staff Writer

The Supreme Court today reversed the convictions of six Negroes convicted of a breach of the peace after four of them entered a bus station waiting room reserved for white people in Shreveport, La.

Neither the unsigned opinion nor the brief seeking high court review specifically referred to those convicted as "Freedom Riders", but the brief quoted them as saying they were waiting for a bus to Jackson, Miss., scene of the Freedom Rider demonstrations last year.

The court acted without hearing arguments in the case.

Referring to a previous decision in its first and only sit-in case, the court said the only evidence to support the charge of a breach of the peace was that those convicted were violating a custom that separated people in waiting rooms according to race, "a practice not allowed in interstate transportation facilities by reason of Federal law."

2 Justices Criticize Comments by Stewart. Page A-9

Vote Is 7-1

In the sit-in decision, the high court based its reversal on the narrow ground that there was no evidence to support the conviction.

Justice Harlan said the court should have heard argument on the case before acting. Justice Frankfurter, who is ill, took no part. The court's vote was thus 7-1.

The court's two-page decision noted that four of the six persons went into the white waiting room and refused to go to the Negro waiting room when approached by Shreveport police. The other two were arrested while sitting nearby in the car which had brought the six to the bus station.

The opinion noted that there was no evidence of violence and that the six were quiet, orderly and polite. The opinion rejected the finding of the trial judge that the mere presence of Negroes in the white waiting room was sufficient evidence of a breach of the peace.

Two Got 2 Months

The would-be travelers all received substantial sentences. Two women who entered the white waiting room were each sentenced to serve 15 days in jail and to pay a fine of $150 or serve another 30 days. One of the men was given a 30-day jail term plus $150 fine or an additional 30 days.

The other man in the waiting room was sentenced to three months in jail and fined $200 or an additional 45 days.

As for the two men who did not enter the station but were convicted as principals, one was sentenced to three months in jail and fined $200 or an additional 45 days and the other was sentenced to 30 days in jail and fined $200 or an additional 45 days.

In sentencing them, the Louisiana judge said the sentences were motivated by the court's desire "to do what it can to maintain the relatively harmonious relationships in this community that have existed in the past between the races and to prevent incidents in Shreveport that can have hardly any other conclusion except the destruction of the relatively [illegible] have existed here."

In other action today the court:

1. Refused to review a decision that the Kohler Co. of Kohler, Wis., was guilty of unfair labor practices in the prolonged dispute with the United Auto Workers.

2. Ordered reargument of a suit over distribution of waters of the Colorado River in Southwestern States. The decision to hear the case for a second time was announced in a brief order which gave no reason. The case had been argued before the high tribunal for more than 16 hours, beginning last January 8 and concluding on January 11.

3. Refused to review the conviction of the former president of the Newspaper and Mail Deliverers' Union on charges of obstructing commerce by extortion. The case was brought to the high court by the former union president, Sam Feldman, who was found guilty with others of extorting $45,000 from a magazine and newspaper wholesale distributor.

Irving Bitz an underworld figure who went into the newspaper distribution field, pleaded guilty and drew a five-year prison term in the same case.

During the trial witnesses testified that Feldman brought Bitz to a meeting of distributors and threatened them with a strike if they failed to give Bitz "whatever he works out with you people."

Reverse Murder Conviction

4. Reversed, by a 4-3 vote, the first-degree murder conviction of a 14-year-old Colorado youth who had been sentenced to life imprisonment after he admitted a robbery-assault on a man who later died.

Justice Douglas said that the youth of the boy, his five-day detention, the failure to send for his parents, the failure immediately to bring him before a juvenile court judge and the failure to see to it that he had the advice of a lawyer or friend combined to lead to the conclusion that the formal confession on which his conviction rested violated his constitutional rights.

Justice Clark, joined by Justices Harlan and Stewart, said the court upset the conviction without support from precious cases and "on the basis of inference and conjecture."

Justices Frankfurter and White did not take part in the decision.

6-TW (Rev. 3-2-62)

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Unnecessary Comment

It is not often that a concurring opinion in the Supreme Court is so wide of the mark as that of Mr. Justice Stewart in the case of Lanza vs. New York. Mr. Stewart has supplied a gratuitous opinion on a question of organized crime in this Lanza case on charges of contempt of a legislative committee. His opinion is altogether irrelevant to the decision and highly objectionable to those of his colleagues. His dictum confuses the law and diminishes the authority of the decision. More serious still, it suggests Supreme Court condonation of a repugnant practice.

In 1957, when Lanza visited his brother in a New York jail and conversed with him in a room set aside for such visits, the conversation was bugged and recorded without the knowledge of the brothers. Interrogated subsequently by an investigating committee of the State legislature, Lanza refused to answer questions on the ground that they were based on information obtained through the bugging in violation of a right of privacy guaranteed to him through the Fourth Amendment. The Supreme Court concluded that at least two of the questions were not related to the intercepted conversation and sustained Lanza's conviction for contempt on this ground alone.

But Mr. Justice Stewart, after acknowledging that the Fourth Amendment's protection may extend not alone to a home but also to a business office, a store, a hotel room, an apartment, an automobile or a taxicab, asserted "it is obvious that a jail shares none of the attributes of privacy" to be found in such places. This seems to us far from obvious.

To be sure, as Mr. Justice Stewart put it, "to say that a public jail is the equivalent of a man's 'house' or that it is a place where he can claim constitutional immunity from search or seizure is a novel argument." But that is not the argument offered here. The rules of a jail may of course involve serious infringements on the privacy of inmates or those who visit them. But when jail authorities set aside an area where inmates and visitors may talk in presumed privacy and then eavesdrop on their conversation, they engage in an ugly and unworthy and perhaps unconstitutional sort of deception. The *Lanza* case, Justice Stewart said, bears no resemblance to the *Leyra* and *Spano* cases in which the Supreme Court set aside state convictions because they were based on confessions elicited by trickery. On the contrary, this is very like them.

The New York Appellate Division called the conduct at the jail "reprehensible and offensive," "atrocious and inexcusable." The condemnation is not too severe. Why should the Supreme Court of the United States go out of its way gratuitously to look at such conduct more complacently?

Supreme Court

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62-27585-4
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199 JUN 19 1962

The Washington Post and Times Herald
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The Evening Star
New York Herald Tribune
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The Wall Street Journal
The National Observer
Date

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Supreme Court

The Washington Merry-Go-Round

The Presidency and the Court

By Drew Pearson

Almost at the same moment that the University of Mississippi was under a near state of siege, a quiet ceremony took place in the Supreme Court that had ordered the admission of James H. Meredith.

The Court was to convene for its first session at 10 a. m. Promptly at 9:57 the President of Pearson the United States strode in and sat inconspicuously in a side front seat. He had been up until 5:30 a. m. trying to bring a halt to rioting in Mississippi.

At 10 o'clock, eight black-robed Justices entered and took their seats. Chief Justice Earl Warren read a brief tribute to retiring Justice Felix Frankfurter, then announced that the President had appointed Arthur J. Goldberg to fill his place.

"I have already administered the constitutional oath to Justice Goldberg," he announced, "and the clerk will now administer the judicial oath."

Holding up his right hand, the son of a Jewish immigrant swore that, regardless of rich or poor, he would interpret the laws of the United States without prejudice or favor.

Justice Goldberg took his seat at the extreme right end of the bench beside Justice Potter Stewart of southern Ohio, a conservative Republican. Next to Stewart sat Justice John M. Harlan, whose grandfather, a slave-holding Kentuckian who also sat on the Supreme Court, wrote a dissent in the first segregation case before the Court after the Civil War. He argued that Negroes were entitled to equal toilet facilities in inns and taverns.

Near Republican Harlan sat Justice Tom Clark, a Texas Democrat who concurred in writing the school desegregation decision, and Justice Hugo Black of Alabama, once a member of the Ku Klux Klan, who rendered the decision, after concurrence by his colleagues, requiring Ole Miss to admit James Meredith.

Other Justices, William O. Douglas of Washington, William J. Brennan of New Jersey, Byron White of Colorado, and Chief Justice Warren, longtime Governor of California, represented a cross-section of the United States.

Below them, almost out of sight, sat the President of the United States who only a few hours before had sent troops into Mississippi to uphold an order of the Supreme Court.

Looking Back

The President, a student of history, must have recalled, as he sat there watching the simple ceremony, that it was not always so. Not always had the President and the Supreme Court been together. Not always had the President enforced Court decisions.

On three memorable occasions in American history, the Court and the President had been bitterly at odds, and there had been the famous statement by President Andrew Jackson regarding the Bank of the United States case: "John Marshall has handed down his decision, now let him enforce it." And there had been Abraham Lincoln's statement that the Court's Dred Scott decision put the doctrine of democracy down "as thin as homeopathic soup made by boiling the shadow of a pigeon that had starved to death."

And there were the epithets hurled at the Court by Justice Black of Pennsylvania who called Chief Justice Roger Taney a "much spotted traitor to the Constitution" and a "political turkey buzzard."

"Shall he be permitted to vomit the filthy contents of his stomach on every decent man in the country without having his neck twisted?" he asked, in a mood just as critical of the Court as some Mississippians are today.

Firmer Government

All these things may have gone through the mind of the President as he sat opposite and below the Court, not above it—symbolic of the fact that in our system the Court is separate from and equal to the Executive.

62-27585-A
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149 OCT 9 1962

The Washington Post and Times Herald
The Washington Daily News
The Evening Star
New York Herald Tribune
New York Journal-American
New York Mirror
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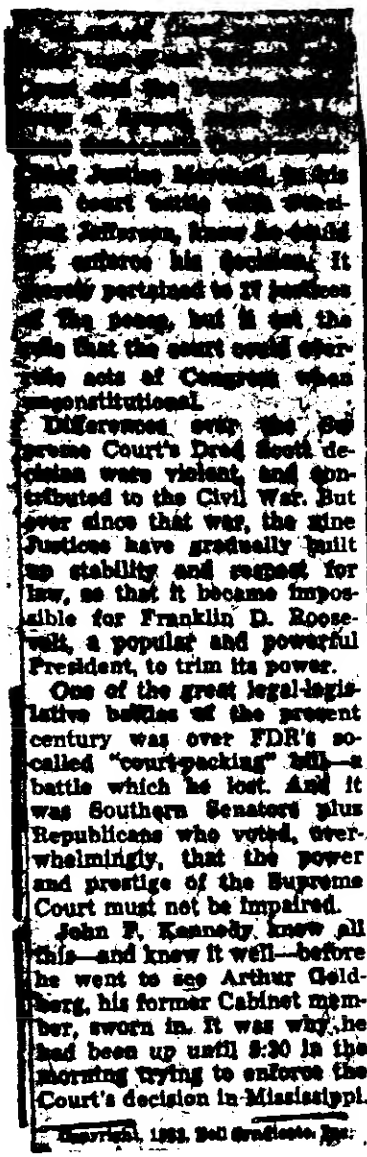
The Wall Street Journal
The National Observer
Date

OCT 4 1962



Chief Justice Marshall, in his own court battle with President Jefferson, knew he could not enforce his decision. It merely pertained to 17 justices of the peace, but it set the rule that the court could overrule acts of Congress when unconstitutional.

Differences over the Supreme Court's Dred Scott decision were violent, and contributed to the Civil War. But ever since that war, the nine Justices have gradually built up stability and respect for law, so that it became impossible for Franklin D. Roosevelt, a popular and powerful President, to trim its power.

One of the great legal-legislative battles of the present century was over FDR's so-called "court-packing" bill—a battle which he lost. And it was Southern Senators plus Republicans who voted, overwhelmingly, that the power and prestige of the Supreme Court must not be impaired.

John F. Kennedy knew all this—and knew it well—before he went to see Arthur Goldberg, his former Cabinet member, sworn in. It was why he had been up until 3:30 in the morning trying to enforce the Court's decision in Mississippi.

Form No. 1 (Rev. 10-15-62)

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SUPREME COURT 67C, 66 V.

High Court Warned of Violence If Trespass Laws Are Voided

A2

Associated Press

A South Carolina lawyer told the Supreme Court yesterday that if it knocks down local trespass laws which give store owners police backing in refusal to serve Negroes it may mean "we will have broken bones and maybe deaths."

Theodore A. Snyder Jr. of Greenville said a property owner should be permitted to call on law officers to eject any person he does not like. Otherwise, he said, the question arises whether the owner can take the law into his own hands and use force.

The high tribunal heard the South Carolina case, one of seven from six states, in the second day of its consideration of the question of State power to enforce segregation in private business places open to the public. The arguments are expected to be completed today but the answer may not come until next spring.

Attorney General Jack P. F. Gremillion of Louisiana asked the Court what State officials can do when racial picketing raises a threat of disorders or even riots.

"If we fail to use our own police to keep the peace, the first thing you know the marshals will be coming in," Gremillion said. "The next thing the troops will be marching in."

The Louisiana official was defending the conviction of three Negroes and a white man for refusing to leave a lunch counter in a McCrory dime store in New Orleans during 1960 sit-in demonstrations in the South.

Constance Baker Motley, counsel for the Legal Defense Fund of the National Association for the Advancement of Colored People, argued on behalf of 10 Negro sit-in demonstrators who were convicted of trespass after sitting at white-only dining areas in Birmingham, Ala., stores.

She said the arrests were ordered by Police Headquarters without any request from officials of the stores and that the Negroes were prosecuted by the city even though no one connected with the stores signed complaints.

The Washington Post and Times Herald A2
The Washington Daily News
The Evening Star
New York Herald Tribune
New York Journal-American
New York Mirror
New York Daily News
New York Post
The New York Times
The Worker
The New Leader
The Wall Street Journal
The National Observer
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Mrs. Motley said the convictions actually were "predicated on a city ordinance requiring racial segregation of eating facilities, buttressed by a massive State policy of racial segregation."

Birmingham's counsel, Watts K. Davis, countered by insisting that the 14th Amendment "does not reach to demonstrations conducted on private property over the objection of the owner." He said the real issue in this case is that of trespassing after a warning.

The Court also heard arguments on an appeal by two Birmingham Negro ministers convicted of inciting college students to violate a trespass law by joining in sit-in demonstrations. The Rev. F. L. Shuttlesworth is under sentence of 180 days in jail and the Rev. Charles Billups was sentenced to 30 days.

The South Carolina sit-in case which the Court was still considering when it quit for the day involves 10 Negro students arrested at a lunch counter in Greenville.

Matthew J. Perry, a Columbia, S. C., attorney, argued that State action was involved in the arrests which were made by Greenville city police.

"At the very least," he said, "the State may not enforce racial discrimination which expresses deep-rooted public policy."

In his reply, Snyder said a Greenville ordinance requiring proprietors to provide separate facilities for Negroes and white persons probably is unconstitutional. But he contended the ordinance was not involved in the case of the Negroes.

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Courts Hog-tie Police, Says Supt. Wilson

Decisions Undercut Ability To Be Effective, He Contends

BY EDMUND ROONEY JR.

Police Supt. O. W. Wilson charged Friday that American courts greatly restrict policemen in their authority to enforce laws and protect lives and property.

"Decisions of our courts tend to reflect hostilities against the police in a continuing stream of opinions restricting the police," he said in a speech at Northwestern University.

* * *

"LET the police have the authority to do what the public expects to do in suppressing crime. If we followed some of our court decisions literally, the public would be demanding my removal . . . with justification."

Wilson spoke at a conference, sponsored by the NU Law School, on police protection and individual civil liberties. Attending were 150 law enforcement experts from across the country.

"The uniform crime reports not only show that there has been a steady and consistent increase in crime each year," he said, "but they also show a downward trend in the percentage of persons convicted in most categories of crime.

"This may be taken as a warning that the scales of justice are getting out of balance."

* * *

WILSON said two sources of public antagonism cause considerable discrepancies between what the public expects the police to do and what they are actually allowed to do under the law.

"Good citizens stopped by the police for traffic violations often blame the police rather than themselves. No one likes to admit he is wrong," he said.

"There also is a tendency to blame the police for a high incidence of crime instead of recognizing there are many other crime causes such as slum conditions, narcotics addiction, lack of parental responsibility, unemployment, cultural inequalities, and other social factors over which the police have no influence or control."

(Indicate page, name of newspaper, city and state.)

13 Chicago Daily News Chicago, Ill.

Date: Nov. 16, 1962
Edition: Red Streak
Author:
Editor: John Stanton
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SUPREME COURT

The Right to Associate

IN its appointed task of protecting our liberties, the Supreme Court has just acted on another "freedom" case —this one, both the decision and the issue, much fuzzier than most.

The head of a local chapter of the National Association for the Advancement of Colored People was called before an investigating committee of the Florida Legislature. The committee ostensibly was checking on whether 14 alleged communists or sympathizers had infiltrated the NAACP chapter.

The NAACP man testified under oath that none of the 14 was a member of his chapter. But he wouldn't bring his membership list to the hearing room to refer to in sight of the committee. He was convicted of contempt.

With this type of hair-slicing on both sides, it is not surprising the Supreme Court split in several directions in deciding the case. The sharpest split, interestingly enough, was between President Kennedy's two appointments to the court.

Justice Goldberg, President Kennedy's newest court appointee, wrote the majority opinion, which erased the contempt conviction of the Rev. Theodore R. Gibson of the Miami NAACP. There was no "adequate foundation" for the Florida committee nosing into the NAACP membership, he said, on suspicion that a few commies had slipped in. It all comes under the head, he said, of the "constitutional privilege to be secure in associations in legitimate organizations."

In a concurring opinion, Justice Douglas went beyond the Goldberg opinion, saying a man's associates are "no concern of government." Justice Black, in another opinion, said a man has a right to associate with communists or anyone else.

Justice White, President Kennedy's first court choice, said the effect of this decision could be to prevent official investigators from discovering communist penetration of legitimate organizations until it was too late—until the organization had been "reduced to vassalage" by the communists.

"I would have thought," Justice White wrote, "that the freedom of association which is and should be entitled to constitutional protection would be promoted, not hindered, by disclosure which permits members of an association to know with whom they are associating and affords them the opportunity to make an intelligent choice as to whether certain of their associates who are communists should be allowed to continue their membership."

Freedom to associate, like other freedoms, also carries a responsibility. Justice White has a point.

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The Washington Post and Times Herald
The Washington Daily News 26
The Evening Star
New York Herald Tribune
New York Journal-American
New York Mirror
New York Daily News
New York Post
The New York Times
The Worker
The New Leader
The Wall Street Journal
The National Observer
Date

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Five Important Cases Come Up Before High Court This Week

By James E. Clayton
Staff Reporter

There rarely, if ever, has been a week when the Supreme Court was confronted with oral arguments on issues as important to the Nation and as interesting to observers as those it faces in the next four days.

Without the usual interruption for matters of interest primarily to lawyers, the Justices will hear arguments on school desegregation in Virginia and Georgia, legislative reapportionment in Colorado, obscenity laws in Ohio and Kansas and a group of citizenship and passport requirements.

In three of these matters, the Court is being asked to hold parts of acts of Congress unconstitutional. In two more it is being asked to hold state laws unconstitutional. In still another, the validity of a state constitutional provision is challenged.

Prince Edward Schools

But in their potential impact on the Nation the two cases involving desegregation loom above the others.

In a case from Prince Edward County, Va., the Court is being asked to rule that it is unconstitutional for a state to close public schools in one county to avoid desegregation while keeping the schools in other counties open.

Prince Edward's closing of public schools has been watched by other areas in the Deep South as a way to postpone even further the day when public schools will be desegregated.

In the other case, the Court is being asked to say just what it meant nine years ago when it said schools should be desegregated with "all deliberate speed."

Sharp Issue

Atlanta, Ga., is desegregating its schools, one grade per year from the highest grade down. The NAACP Legal Defense Fund has asked the Supreme Court to rule that this is too slow a pace considering the situation in Atlanta

REC-134 62-27585-A
APR 3 1964
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The Washington Post and Times Herald A2
The Washington Daily News
The Evening Star
New York Herald Tribune
New York Journal-American
New York Mirror
New York Daily News
New York Post
The New York Times
The Worker
The New Leader
The Wall Street Journal
The National Observer
People's World
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There was an indication from the Justices last spring that the passage of time is reducing the delay that is permissible in school desegregation. The Atlanta case may be the one for a further refinement of what "deliberate speed" should mean in 1964.

The Colorado reapportionment case is, perhaps, the most difficult of its kind to reach the Justices. They already have under advisement cases concerning the constitutionality of legislative apportionment in New York, Alabama, Maryland, Virginia and Delaware.

But Colorado raises the sharpest issue of all. It recently adopted a constitutional amendment dividing the seats in one house of its legislature on population grounds but leaving those in the other on a non-population basis. The state says this is an acceptable "little Federal" plan. A group of voters say it discriminates against them as city dwellers.

Act Challenged

The two cases involving obscenity will give the Justices another chance to clarify what is becoming one of the most troublesome areas of the law. In Ohio, the question involves the motion picture "The Lovers." In Kansas, in question is a law that allows the seizure and destruction of obscene books without trial by jury.

The two citizenship cases involve people in quite different circumstances. In one, the Court is being asked whether an act of Congress taking citizenship away from those who served in the armed forces of a foreign state is constitutional. It involves Herman Marks, who was the chief jailer in a Cuban political prison.

The other is a challenge to another provision of the laws that strips citizenship from naturalized Americans who return to their native lands for three years. It involves Angelica Schneider, who was brought to the United States

U.S.

[redacted] challenge to the penalty provisions of the Subversive Activities Control Act. One part of that act bars the use of passports by members of organizations who are required to register with the Government as Communist action groups. The Court is being asked whether this abridges the freedom of citizens to travel.

Only after all these cases are argued has the Court scheduled any comparatively minor matters for next week. Long-time employes of the Court cannot recall when such an array of difficult questions and interesting cases has faced the Justices in an uninterrupted a series.

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Notable Ruling

IN A UNANIMOUS and important decision the Supreme Court has ruled that individual States which have anti-discrimination hiring laws have the right to extend them to interstate airlines. Presumably the ruling could apply also to all interstate carriers, on the ground and water as well as in the air.

It was in our opinion a just decision.

The particular case was that of Marlon D. Green, 32, a Negro and a former Air Corps captain. He had sought in Colorado a pilot's job with Continental Airlines. He was declared qualified but was not hired. The Colorado anti-discrimination Commission found that his race was the reason for not getting the job.

But the Colorado Supreme Court ruled that State fair employment laws may not include interstate carriers. The Supreme Court —and we emphasize, unanimously—reversed the ruling. It is significant that 16 of the 25 States that have anti-discrimination hiring statutes filed a brief as friends of the court supporting the subsequently unanimous view. Among them were the two biggest States, California and New York.

Justice Black, who wrote the decision, disposed logically of the argument against it. We believe that it is a notable step forward toward the goal of racial and religious equality in our country.

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The Washington Post and Times Herald
The Washington Daily News
The Evening Star
New York Herald Tribune
New York Journal-American 10
New York Mirror
New York Daily News
New York Post
The New York Times
The Worker
The New Leader
The Wall Street Journal
The National Observer
Date

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One Of The Reasons Crime Is Increasing In The U.S.

Why do we have so much crime in the United States? There are various reasons but one of them, an over-zealous concern for the rights of criminals, is preventing law-enforcement officials from doing their duty effectively. A few examples:

A policeman walking his beat in a New York City park adjoining a frequently burgled residential area, spied a man dragging a suitcase. "Where did you get that suitcase?" asked the patrolman. When he refused to answer the man was taken to police headquarters for investigation.

It turned out that the suitcase was crammed with the proceeds of a burglary. But the patrolman, not the burglar, was criticized when the case came to court. Because he did not know a burglary had been commited when he approached, questioned and detained the defendant, the court ruled the arrest was unlawful and the evidence of the burglary was illegally seized. The case was dismissed and the burglar went free.

A Washington, D.C., man strangled his wife, bundled her body into a car and disposed of it in a city dump. He made a vague report later, that his wife had been missing five days, and he was picked up by the police on suspicion of murder. He confessed and took the police to the dump where the corpse was uncovered. But his conviction was reversed by the Court of Appeals because his confession had been obtained in jail, without counsel, before arraignment.

In 1957 the U.S. Supreme Court made a decision which shook law enforcement officials throughout the nation. Andrew Mallory, who had a criminal record going back to 1951, had been arrested for a brutal rape. He confessed under no duress and was found guilty. But the Supreme Court reversed the conviction because the police held him for 7½ hours before formally charging him with the crime. He was released, only to be arrested for a similar crime a few years later in Philadelphia.

These are only a few of the scores, perhaps hundreds of miscarriages of justice in recent years.

FBI Director J. Edgar Hoover said: "We are faced today with one of the most disturbing trends I have witnessed in my years of law enforcement; an over-zealous pity for the criminal and an equivalent disregard for his victims."

This is one of the reasons crimes are increasing. We are throttling our law enforcement officers with judge-made rulings that stagger common sense.

(Indicate page, name of newspaper, city and state.)

Page 6
Council Bluffs Nonpareil
Council Bluffs, Iowa

Date: 9/2/64
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Editor: Alvin M. Piper
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Today in National Affairs

What Criteria for Court Posts?

By David Lawrence

WASHINGTON.

Small wonder that the Supreme Court of the United States has steadily fallen into disrepute in recent years as it has developed into an oligarchy of politically rather than judicially minded individuals. Now President Johnson has selected Abe Fortas—his personal friend of long standing who has never had a day's experience on the bench—to be one of the nine justices of the Supreme Court of the United States. This is in line with the unfortunate trend of the past several years.

Other Presidents besides Mr. Johnson, Republican as well as Democratic, have appointed to the Supreme Court political associates or partisan supporters with a controversial background.

Just what criteria do Presidents use in making appointments to the Supreme Court? They sometimes look for outstanding lawyers rather than experienced judges, but often there are political factors involved. Occasionally, a member of the Senate with a legal background is appointed, and several men have gone to the Supreme Court from Congress or from the Cabinet.

Every now and then a U. S. Attorney General or Solicitor General in the Department of Justice has won promotion to the Supreme Court. Some of these appointees have made a fine record, and it is possible that Mr. Fortas may turn out to be a well-balanced and fair-minded justice who is able to forget his early espousal of "Left-wing" causes that made him a controversial figure in the "New Deal." He is only 55 today and has a long period of time ahead in which to adjust his thinking to judicial doctrines.

Men in the political world, however, are not inclined to abandon their views when they ascend to the bench. As justices, they do not usually in their decisions forsake passions or preconceived ideologies. Justice Douglas is as much an outspoken liberal today as he was in "New Deal" days. On the other [illegible], Justice Black, an ex-Senator who was exposed after his appointment as having once been a member of the Ku Klux Klan, has never shown the slightest sympathy for the objectives of that secret cult.

But it would be easier for justices to rid themselves of any previous political prejudices or partisanship if they could serve a few years in the Supreme Court of a state or in an appeals court of the Federal judiciary before being selected for appointment to the Supreme Court of the United States.

This correspondent, discussing the prevalent indifference to the need for men of judicial experience for service on th highest court of the land, wrote in a dispatch on Oct. 1, 1953:

"President Eisenhower says he chose Gov. Warren (to be Chief Justice) because of his middle-of-the-road philosophy. What has that to do with the interpretation of the statutes or the settlement of controversies between citizens, especially when fundamental questions of constitutionality are involved? . . .

"There is no middle of the road between right and wrong in determining a judicial question. Congress may pass good or bad laws, yet whether they are Constitutional has to be decided not on the basis of any particular philosophy of government but on their actual conformity to the powers set forth in the Constitution."

In the same week of 1953, but before it was known who would be appointed Chief Justice, a statement was issued by Glenn R. Winters, editor of the Journal of the American Judicature Society, in which he said:

"Today, the total prior judicial experience of the members of the Supreme Court consists of Mr. Justice Black's 18 months as a police judge and Mr. Justice Minton's eight years on the Federal appellate bench."

Mr. Winters declared it was possible to overemphasize the need for prior judicial experience, but added: "It seems more than clear that it has actually been badly underemphasized. There are great and distinguished judges today on both state and Federal courts eminently qualified for the judicial and administrative responsibilities of the chief justiceship."

It may be that the articulation of these and similar views had an effect subsequently on President Eisenhower, for in his later appointments to the high court he nominated such objective-minded and experienced Federal judges as John M. Harlan, Charls E. Whittaker and Potter Stewart, all of whom have made significant contributions to Constitutional law. But the trend has since turned the other way again, and it is surprising that spokesmen for the bar associations, who often stress the need for a "rule of law," are willing to sit by without protest as political rather than juridical training becomes the major qualification for appointment to the highest court of the land.

66 AUG 10 1965

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The Washington Post and Times Herald
The Washington Daily News
The Evening Star
New York Herald Tribune 17
New York Journal-American
New York Daily News
New York Post
The New York Times
The Baltimore Sun
The Worker
The New Leader
The Wall Street Journal
The National Observer
People's World
Date AUG 11 1965

JUL 29 1965

0-19 (Rev. 5-4-66)

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Holmes
Gandy

State Chief Justices Assail Court Curbs on Questioning

By DANA BULLEN
Star Staff Writer

MONTREAL — More blunt criticism of the Supreme Court's recent ruling limiting questioning of crime suspects is coming from the annual conference of chief justices of the highest state courts.

"I don't feel there is a sound constitutional basis for it," said Chief Justice Theodore G. Garfield of Iowa, the conference chairman, during workshop discussions on criminal law yesterday.

Jurist after jurist echoed similar sentiments. However, the conference was expected to reject a formal resolution calling on the Supreme Court to reconsider last June's controversial decision.

The 5-4 ruling was that a crime suspect must be effectively informed of his rights, including the right to have a retained or appointed lawyer advise him before police can question him.

A leading federal judge who addressed the state jurists' conference called for greater use of evidence obtained by wiretapping and other electronic devices to balance the new restrictions placed on police.

"If we take away the means of possibly solving crimes by confession is it not then logical that these other means be made available?" said Chief Judge J. Edward Lumbard of the U.S. 2nd Circuit Court of Appeals in New York.

Asked about the effect of a 1934 federal law that prohibits interception and disclosure of telephone calls, Lumbard said Congress should repeal the statute. Some states permit taps anyway.

The state jurists, in their discussions, dwelled on problems they saw raised by the Supreme Court's ruling; for example, what the duty of a lawyer is when he advises a suspect about answering questions.

Floor Fight Due

Chief Justice Joseph Weintraub of New Jersey maintained that a lawyer might have an ethical basis for telling the suspect: "If you want my advice as a man, tell the truth."

"That's fine if it's robbery," a former New York prosecutor who sat in on the discussions said. "But if he's a third offender facing life . . . you would have to tell him to keep his mouth shut."

A floor fight was expected today before the chief justices finally reject an effort by Chief Justice John C. Bell Jr. of Pennsylvania to have them urge the Supreme Court to undo the June ruling.

A resolutions committee refused to put the proposed resolution to the full conference, but Bell refused to give up on it.

"I've been a fighter all my life," he said. "I'm ready to do more fighting."

The chief justices are holding their sessions in advance of the 89th annual meeting of the American Bar Association next week. The ABA also is expected to discuss the recent Supreme Court action.

The Washington Post and Times Herald
The Washington Daily News
The Washington Evening Star A1
New York Daily News
New York Herald Tribune
New York Post
The New York Times
New York World Journal
New York World Journal Tribune
The Baltimore Sun
The Worker
The New Leader
The Wall Street Journal
The National Observer
People's World

Date AUG 6 1966

EX 101

REC-49 62-27585-A

184 AUG 24 1966

61 AUG 29 1966

Restrictions on Prejudicial Crime Reporting Are Predicted

By FRED P. GRAHAM
Special to The New York Times

MONTREAL, Aug. 6—The freedom of the press of the United States to printing prejudicial articles about criminal defendants may soon come to an end, a constitutional law expert said today.

Prof. Arthur E. Sutherland of Harvard Law School made his prediction in a talk to trial judges from the United States, who are here for the 59th convention of the American Bar Association next week. He said that the Supreme Court's recent decision reversing the murder conviction of Dr. Samuel H. Sheppard might be "a crack in the armor" of the press's freedom to print what it wishes about a man facing trial.

Since the Supreme Court has never ruled directly on this point, he urged the trial judges to "step into the fray" and assert power to punish newspapers for contempt if they print prejudicial articles.

In the Sheppard decision, the High Court blamed the trial judge for failing to insulate the jury from the prejudicial publicity, but Professor Sutherland said the decision implied that judges had the power to control "outside influences" that might prejudice the trial.

Notes Clark Opinion

He called attention to the following passage from Justice Tom C. Clark's opinion in the Sheppard case:

"If publicity during the preceedings threatens the fairness of the trial, a new trial should be ordered. But we must remember that reversals are but palliatives; the cure lies in those remedial measures that will prevent the prejudice at its inception. The courts must take such steps by rule and regulation that will protect their processes from prejudicial outside interference."

Professor Sutherland mentioned particularly publicity of confessions and previous convictions, when neither may be admitted as evidence.

In aspousing the adoption of a system similar to the one used in England, in which cases are promptly reported until they unfold in court, Professor Sutherland championed the position of another Harvard law professor, Supreme Court Justice Felix Frankfurter.

During the 1940's the High Court ruled three times that the First Amendment's freedom of press guarantee prohibited judges from punishing newspaper that criticized the conduct of pending cases.

Frankfurter Dissent

Justice Frankfurter was the lone member of the court who insisted that a judge could nevertheless punish journalists for printing prejudicial articles about criminal defendants.

Fred M. Vinson Jr., Assistant Attorney General of the United States in charge of the criminal division, told a meeting of state bar officials that the public interest may require publication of certain information about criminal suspects.

He cited the case of Richard F. Speck, who was identified by the police as the man who murdered eight nurses in Chicago last month, presumably in an effort to apprehend him.

Mr. Vinson said Federal law enforcement officials would not initiate prejudicial news stories, but would release a suspect's record of convictions upon request.

At the final session of the Conference of Chief Justices, the delegates, representing 47 states and Puerto Rico, voted down a resolution sharply critical of the Supreme Court's recent decisions limiting police interrogation.

Only eight votes were cast in favor of the resolution, which was proposed by Chief Justice John C. Bell Jr. of the Pennsylvania Supreme Court.

Although many of the justices had been critical of certain aspects of the high court's confessions doctrine during the group's discussions, they said they were not prepared to attack the court in strong terms until the decision's effects law enforcement became known.

The chief justices indicated their concern at recent disturbances in city slum areas by condemning "all forms of disrespect for law by both individuals and groups," calling "the rule of law the only alternative to a lawless society."

At the suggestion of Chief Justice Joseph Weintraub of New Jersey, who said "many groups and individuals just don't get attention until they do the wrong thing, the justices added to their resolution the statement that government had a duty "to deal promptly and fairly with the claimed grievances of the citizens."

77 SEP 1 1966

REC-42

NOT RECORDED
184 AUG 24 19

AUG 7 1966

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Sullivan
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The Washington Post and Times Herald
The Washington Daily News
The Washington Evening Star
New York Daily News
New York Herald Tribune
New York Post
The New York Times
New York World Journal
New York World Journal Tribune
The Baltimore Sun
The Worker
The New Leader
The Wall Street Journal
The National Observer
People's World

Date

0-19 (Rev. 12-9-66)

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Trotter
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How Many Retrials?

Once more the Supreme Court has addressed itself to the dreary task of requiring unbiased juries. For the third time it sent the Phil Whitus and Lem Davis cases back to Georgia for retrial. Not only was that state's system of selecting juries found to be highly discriminatory; the state was also found to be stubbornly resisting the necessary changes.

"For over four score years," as Justice Clark wrote for the Court, the law has provided "that a conviction cannot stand if it is based on an indictment of a grand jury or the verdict of a petit jury from which Negroes were excluded by reason of their race." But some Georgia authorities simply refuse to recognize this fact. The Court of Appeals had thrown out previous convictions in these cases on the ground that although 45 per cent of the population of the county was Negro, no Negro had ever served on a jury within the memory of the witnesses.

Despite this reversal the state used the old discredited jury lists once more in the new trial. It left jury commissioners free to select prospective jurors from segregated tax rolls on the basis of personal acquaintance. Bias is inevitably built into such a system, and the continued use of it suggests studied defiance of the law.

The Supreme Court resisted a plea from counsel that the defendants be freed because of these circumstances instead of being sent back for a new trial. Retrial, of course, is the customary practice. A grave question arises, however, as to how far the retrial process may be carried in cases of this sort where the state appears determined to prevent a fair trial. These men were first convicted of murder in 1960. After the cases have gone three times before the Supreme Court new trials must begin all over again.

The least that can be said is that this is a sad commentary on the constitutional guarantee of "a speedy and public trial by an impartial jury." At some point the courts may have to decide whether repeated trials before discriminatory juries, while the accused remain in prison, are themselves an invasion of constitutional rights.

The Washington Post
Times Herald A12
The Washington Daily News
The Evening Star (Washington)
The Sunday Star (Washington)
Daily News (New York)
Sunday News (New York)
New York Post
The New York Times
World Journal Tribune
(New York)
The Sun (Baltimore)
The Worker
The New Leader
The Wall Street Journal
The National Observer
People's World

Date JAN 28 1967

320
FEB 23 1967

EX-104

REC-9

62-27525-B

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0-20 (Rev. 1-26-66)

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(SUPREME COURT)
WASHINGTON--TWO CABINET MEMBERS AND TWO MEMBERS OF CONGRESS WERE MENTIONED TODAY AS POSSIBLE SUCCESSORS TO SUPREME COURT JUSTICE TOM C. CLARK. ANOTHER WAS U. S. SOLICITOR GENERAL THURGOOD MARSHALL.

WITH CLARK ON THE BRINK OF RETIREMENT, THE NAMES OF MARSHALL, TREASURY SECRETARY FOWLER, LABOR SECRETARY WILLARD WIRTZ, SEN. ABRAHAM A. RIBICOFF, D-CONN., AND REP. WILBUR MILLS, D-ARK. FIGURED PROMINENTLY IN SPECULATION ABOUT PRESIDENT JOHNSON'S LIKELY CHOICE FOR A REPLACEMENT.

CLARK, 67, A VETERAN OF 18 YEARS ON THE HIGH COURT, SAID YESTERDAY HE WOULD RESIGN WHEN HIS CURRENT TERM ENDS IN JUNE TO AVOID ANY POSSIBLE CONFLICT OF INTEREST WITH HIS SON, RAMSEY CLARK, WHOM JOHNSON NOMINATED TUESDAY TO BE ATTORNEY GENERAL.

HIS RETIREMENT COULD CREATE THE FIRST OF A SERIES OF OPENINGS WHICH COULD PERMIT THE PRESIDENT TO APPOINT A "JOHNSON COURT."

A SECOND WHITE HOUSE TERM FOR JOHNSON COULD GIVE HIM ALMOST SIX YEARS TO FILL VACANCIES AND THE COURT'S PRESENT MEMBERSHIP INDICATES THERE WILL BE SEVERAL RETIREMENTS DURING THAT PERIOD.

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EX-106 REC-75

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WASHINGTON CAPITAL NEWS SERVICE

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UPI-97
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WASHINGTON--ASSOCIATE JUSTICE SUSIE ~~MARSHALL~~ SHARP OF THE NORTH CAROLINA SUPREME COURT WAS PROPOSED TODAY FOR POSSIBLE APPOINTMENT TO THE U.S. SUPREME COURT.

SENS. SAM ERVIN JR., AND B. EVERETT JORDAN, NORTH CAROLINA DEMOCRATS, REVEALED THEY HAD SUBMITTED JUDGE SHARP'S NAME TO PRESIDENT JOHNSON IN A LETTER.

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WASHINGTON CAPITAL NEWS SERVICE

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UPI-85
(S C)
WASHINGTON--THE SUPREME COURT TODAY REVERSED THE MURDER CONVICTION OF LOUIS BOSTICK, SENTENCED TO DEATH IN THE 1962 SLAYING OF A SOUTH CAROLINA SHERIFF IN PINELAND.

IN A ONE-SENTENCE ORDER, THE COURT CITED ITS JANUARY DECISION REVERSING TWO MURDER CONVICTIONS UNDER GEORGIA LAW ON THE GROUND THAT THE JURY SELECTION SYSTEM DISCRIMINATED AGAINST THE DEFENDANTS, WHO ARE NEGROES.

THE VICTIM IN TODAY'S CASE WAS JASPER COUNTY SHERIFF C. W. FLOYD, SHOT TO DEATH ON JAN. 18, 1962.

THE SOUTH CAROLINA SUPREME COURT UPHELD BOSTICK'S CONVICTION NOV. 30, 1965.

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WASHINGTON CAPITAL NEWS SERVICE

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Marshall Has Sc[illegible]

[illegible] called the [illegible] an [illegible] change.

Answering [illegible] Senate Judiciary Committee hearing on his nomination to the court, Marshall told Sen. [illegible] O. Eastland, D-Miss., the committee chairman, that no judicial officer should be controlled by personal views in reaching decisions. APPROX. 1903

"My own sense of right and wrong is the Constitution itself," the 59-year-old solicitor general said.

As a justice, Marshall said, he would make every effort" to read the Constitution in its entirety and apply the law to the facts in individual cases "without any personal predilection."

4th Day of Hearings

Eastland began questioning Marshall at the start of the fourth day of the hearing on his nomination. Marshall, who is expected to be approved for the post by the whole Senate, would become the court's first Negro member.

Marshall concluded testimony before the committee at today's hearing, but it appeared that at least one more session would be called, possibly not until early next week.

Eastland, referring to Marshall's extensive litigation of civil rights cases in Southern states during 23 years as counsel for the NAACP Legal Defense Fund, asked whether Marshall during those years had ever been "prejudiced against white people."

"Not at all," Marshall responded. ". . . I don't know of one person that I was against in the South."

Answering a follow-up question from Eastland, Marshall asserted firmly that he would afford "the same fair treatment" to Southerners before the Supreme Court as to anyone else.

On the role of the Supreme Court, Marshall was asked directly by Eastland: "Do you think the Supreme Court is an instrument of social change?"

[illegible] cumbersome on a series of queries about the historical circumstances surrounding the [illegible] separation of the 13th and 14th Amendments to the Constitution.

Quizzed on 14th Amendment, Thurmond, quoting extensively from statements by congressional leaders and congressional committee reports a century ago, pressed Marshall on what weight such materials should be given in interpreting [illegible] Amendment clauses.

Marshall said that such materials would be "relevant but not controlling" on questions involving interpretation of the provisions presented in cases before the court.

Thurmond, quoting from a speech of the time, indicated that 14th Amendment sections a century ago were felt by some senators and representatives to protect only such things as a Negro's personal security and right to acquire and enjoy property.

Today, the equal protection clause of the amendment is the basis for a wide range of equal rights guarantees.

Reiterating his belief that the Constitution is "a living Constitution," Marshall said that "you can't expect the court to apply the Constitution to facts in 1967 that weren't in existence (when the provisions were drafted)."

Questions Opinion

Eastland, near the close of today's session, questioned one of Marshall's opinions while a judge of the 2nd U.S. Court of Appeals in New York citing a book by American Communist leader Herbert Aptheker.

Marshall said he "positively did not know" that the book had been written by a Communist, and that the view in his opinion had been based on "about six Supreme Court cases" that he considered were directly on the question involved.

Sen. Sam J. Ervin, D-N. C., taking up the point, said that the Supreme Court's Miranda decision on confessions contained numerous references to books and articles.

He had always felt Ervin said, that appellate court decisions ought to be based on the record in the trial court" rather than on [illegible] materials.

[redacted]

Jaffe accused the nominee of displaying a "defiant attitude" before the committee in declining to answer some questions about current criminal [illegible] assurances.

He said that Marshall, in 1950, during the McCarthy era, had spoken in Washington in celebration of loyalty programs and during the same years had been listed by the Communist party's Daily Worker as one of a number of people who opposed contempt citations for a group of Hollywood figures [illegible] "The Hollywood Ten."

Jaffe insisted that "we're in no way challenging Mr. Marshall's [illegible]

[redacted]

Supreme Court

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The Washington Post
Times Herald
The Washington Daily News
The Evening Star (Washington)
The Sunday Star (Washington)
Daily News (New York)
Sunday News (New York)
New York Post
The New York Times
World Journal Tribune (New York)
The Sun (Baltimore)
The Worker
The New Leader
The Wall Street Journal
The National Observer
People's World

Date JUL 19 1967

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Violence Against the Court

Ordinary American citizens must react to the disgraceful behavior of those who besieged the Supreme Court Building Wednesday with outrage and indignation that probably has to be tempered with the old folk-wisdom, "poor people have poor ways."

Those who have been deprived of the advantages of affluence and a polite education cannot be expected to have the manners of finishing school graduates or the vocabulary of parliamentarians. The form and style of the dignified lawyers who appear before the Court inside the building was hardly to be expected of the unruly gathering assembled outside the Supreme Court Building.

This apology being uttered, and this statement in mitigation having been voiced, however, nothing can be said in defense of the acts of violence by individuals in the group brought to the premises by the Poor People's Campaign. The best friends of the Campaign must reflect upon this episode with sorrow and surely the sober persons who are a part of the campaign must look back upon this demonstration with shame. There was something ironic in this assault upon the Supreme Court Building by a predominantly Negro mob on the very day that Governor Lester Maddox was ordering Georgia flags to fly at half staff because of the U.S. Supreme Court decision against freedom of choice school integration.

Of course, the black militants in the country might like to see racist appellations hurled at the Supreme Court, since it is the living proof that justice in America is not dominated by racism. To persuade racial minorities that the Supreme Court is racist would be to convince them that the Negro cannot hope for justice in the existing order. But the rank and file of the Poor People's Campaign cannot wish to see such an unjust reproach fastened on the Supreme Court for such a revolutionary purpose.

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The Washington Post
Times Herald A-20
The Washington Daily News
The Evening Star (Washington)
The Sunday Star (Washington)
Daily News (New York)
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The New York Times
The Sun (Baltimore)
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The New Leader
The Wall Street Journal
The National Observer
People's World

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The very attempt to "petition" the Supreme Court was a gross impropriety the blame for which must rest on the shoulders of Dr. Abernathy and the march leaders. The Supreme Court cannot be "petitioned" in this manner. In the very nature of things, it cannot respond to a petition of a demonstrating delegation. Were it to do so, justice as we conceive it would be at an end in this society. The Supreme Court can be petitioned only by counsel, in appropriate form and through prescribed channels. The demonstration against the Indian fishing case decision of the Court was as inadmissable as would have been a segregationist demonstration on the Supreme Court steps against the school integration decisions of 1954.

The Poor People's Campaign, by this foolish episode, has done its cause more harm than any of its enemies could do it. As the President said in his Texas address: "Those who glorify violence as a form of political action are really the best friends the status quo ever had."

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The Washington Merry-Go-Round

Nixon Call to Warren Undercut LBJ

By Drew Pearson

Relations between the President and President-elect, hitherto more cordial than between any other incoming and outgoing Presidents, were disrupted when Nixon moved in on the question of continuing Chief Justice Earl Warren without any consultation with President Johnson whatsoever.

Nixon's move had the earmarks of a quick double play to block the interim appointment of former Justice Arthur Goldberg as Chief Justice.

President Johnson has on his desk right now the resignation of Chief Justice Warren subject to action at any time. He can and still may act on it right up until noon of Jan. 20. And he had been debating such action when out of the clear blue, the President-elect phoned Chief Justice Warren asking him to remain as head of the Court until June.

Obviously it was not Nixon's preogative to do this and, furthermore, both protocol and courtesy required him to call the President in advance of his request to Warren. Johnson has leaned over backward to clear with Nixon all questions of policy which affect the country during this interim period.

He cleared with Nixon beforehand the relatively minor matter of the invitation which Secretary of State Rusk conveyed to the NATO foreign ministers in Brussels to attend a NATO 20th anniversary celebration in Washington next September.

He also has taken up with Nixon every detail of the Paris talks, and instructed Ambassador Averell Harriman to call on the President-elect to fill him in further. No step has been taken in the Vietnam negotiations without informing Nixon.

The President also informed the President-elect in some detail regarding his talks with Soviet Premier Kosygin and his hopes to have one final summit conference. He even invited Nixon to accompany him to Europe, if the talks were held.

No President in half a century has been more cooperative toward the new Administration, even ordering 17 State Department rooms placed at Nixon's disposal 48 hours after the election—rooms which are still largely unoccupied.

Because of this there is some belief that Nixon called the Chief Justice deliberately in order to head off the President's plan to appoint Goldberg as Chief Justice. Mr. Johnson had been considering this idea ever since his nomination of Justice Abe Fortas for Chief Justice was turned down by the Senate. He was not unmindful of the fact that as early as last July Chief Justice Warren, when asked by the President to recommend a successor, at first declined to propose a successor, then discreetly pointed out that the Middle West had no representation on the Court and that Goldberg, who comes from Chicago, would make a great Chief Justice.

While the President put his old friend Fortas first on his list, he did not forget Goldberg. Goldberg served as Secretary of Labor in the Kennedy Cabinet, then on the Supreme Court, then agreed to resign to tackle the tough problems of Vietnam peace at the U.N.

In the course of considering Goldberg's nomination as Chief Justice, the President mentioned it to Nixon during their November luncheon. Nixon was non-committed. The appointment was delayed chiefly because the President was seriously considering calling the Senate into special session to act upon the nuclear non-proliferation treaty, at which time he planned to ask for Goldberg's confirmation as Chief Justice.

Meanwhile several high-ranking Republicans had urged Nixon to go along with Goldberg's appointment, including former Attorney General Herbert Brownell and Max Fisher of Detroit, one of the biggest money raisers for the Nixon campaign.

It was against this background that the President-elect put in his private call to Warren.

The Chief Justice, who has been on the opposite side on the Republican fence from Nixon, was caught by surprise. Nixon had sabotaged Warren's bid for the Presidency in 1952 at the GOP convention. The two have not been cordial since.

So when the Chief Justice

The Washington Post
Times Herald D-11
The Washington Daily News
The Evening Star (Washington)
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The New Leader
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The National Observer
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got the call from the President-elect asking him both to administer the oath of office and also continue until June, he acquiesced without realizing that it was President Johnson, not Nixon, who still had the power to accept his resignation at any time up to Jan. 20. Nor did the Chief Justice realize that Arthur Goldberg, the man he very much wanted to be his successor, was on the verge of getting an interim appointment as Chief Justice.

Drew Pearson and Jack Anderson will reveal a secret Saigon plan to stall the Paris peace talks further over Radio WTOP, today at 6:40 a.m. and 6:40 p.m.

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UPI-58
(REPEATING UPI-27)
(PLOT)
CLEVELAND--THE FBI TODAY REFUSED COMMENT ON A PUBLISHED REPORT A FEDERAL GRAND JURY WAS INVESTIGATING AN ALLEGED PLOT BY FIVE MEN TO ASSASSINATE THE NINE U.S. SUPREME COURT JUSTICES BY BLOWING UP THEIR COURTROOM.
THE REPORT WAS IN YESTERDAY'S EDITION OF THE CLEVELAND PLAIN DEALER. THE NEWSPAPER, QUOTING SOURCES CLOSE TO THE GRAND JURY, SAID THE PLOT WAS TO HAVE BEEN CARRIED OUT NOV. 18 BUT WAS POSTPONED FOR UNKNOWN REASONS.
THE SOURCES SAID THE FIVE MEN PLANNED TO KILL THE JUSTICES BEACUSE THEY ALLEGEDLY OPPOSED THE HIGH COURT'S LIBERAL LEANINGS.
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SUPREME COURT

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WASHINGTON CAPITOL NEWS SERVICE

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[redacted] Court Trial

The Supreme Court [redacted] said that one of its [redacted] secretary has been the subject of [redacted] data-gathering system which is under attack in a case awaiting the court's action.

In a brief filed Saturday as a friend of the court, Sen. Sam J. Ervin Jr. (D-N.C.), told the justices that the Army's surveillance system was so extensive and indiscriminate that it gathered data on lawful activities of numerous federal and state officials as well as a currently active justice.

Ervin's brief did not identify the justice and the staff of his Senate Constitutional Rights subcommittee refused to confirm reports that it was Thurgood Marshall.

The subcommittee staff disclosed that Ervin himself was mentioned at least once in the vast files turned over by the Pentagon in the course of the senator's investigation of alleged invasions of privacy by the military.

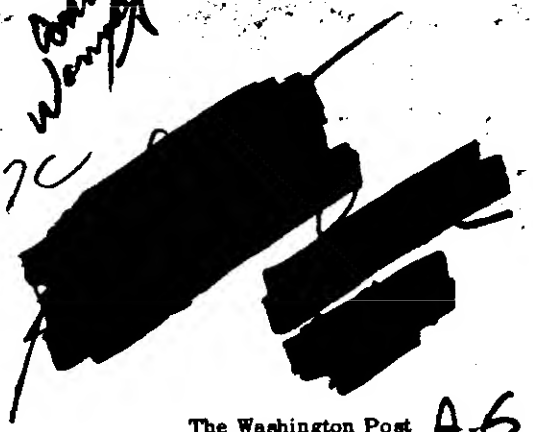
Also mentioned, the staff said, were numerous senators and representatives, some of whose names have turned up previously in the subcommittee probe, including Sens. Edward M. Kennedy (D-Mass.), Edmund S. Muskie (D-Maine), and George McGovern (D-S.D.).

Chief Counsel Lawrence M. Baskir said the justice could not be identified because his name appears in a still-classified computer printout from a military data bank. The Army says the bank itself has been destroyed and one printout preserved solely for use

[redacted] litigation [redacted] court. [redacted] issue is whether a group of [redacted] and other citizens [redacted] ment are entitled to a full federal court hearing on their complaint that illegal military surveillance of civilians has chilled free expression and intruded into private lives.

The Justice and Defense Departments contend that such legal attacks may not be brought by individuals and groups who do not claim they would be intimidated by the existence of the program.

Justice Marshall said yesterday he did not know whether his name had turned up in some Pentagon computer and added that he doubted that he would be intimidated if it did.



The Washington Post A-6
Times Herald
The Washington Daily News
The Evening Star (Washington)
The Sunday Star (Washington)
Daily News (New York)
Sunday News (New York
New York Post
The New York Times
The Daily World
The New Leader
The Wall Street Journal
The National Observer
People's World

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Mr. Kinley
Mr. Armstrong
Ms. Herwig
Mrs. Neenan

Burger ... Court of Appeals to Screen Cases

By FRED P. GRAHAM
Special to The New York Times

WASHINGTON, Nov. 7 — A new "national court of appeals" to help the United States Supreme Court screen out appeals of lesser importance will be proposed in the next few weeks by a panel appointed by Chief Justice Warren E. Burger.

Authoritative sources confirmed today reports that Congress would be urged in the panel's report to establish a seven-member court that would screen all petitions for review before they reached the Supreme Court.

The cases considered most important would be sent on to the Supreme Court for a full hearing and decision. Cases involving less important points of law but representing conflicts between two or more United States Court of Appeal would be heard and decided by the new sub-Supreme Court.

Other petitions for review would simply be denied by the new court and would never reach the Supreme Court. However, the Supreme Court would retain the authority to call up and hear any cases not referred to it by the sub-Supreme Court.

Such a court, if approved by Congress, would substantially change the Supreme Court's position [illegible] American [illegible] would every [illegible] absolute right to take his petition for relief before the Supreme Court, and no longer would the Justices be certain that they were being exposed to all the justifiable complaints raised in the nation's lower courts.

But Chief Justice Burger and other persons on and off the Supreme Court have become convinced lately that some change must be made to relieve the Justices of the time-consuming burden of reviewing the growing number of petitions that reach the high court each year.

[illegible] petitions; [illegible] years ago there were 1,200 petitions. Although many involve insubstantial points raised by prisoners or hopeless appeals brought by convicted persons wishing to delay the days of their imprisonment, the petitions are increasingly consuming time that the Justices would devote to serious cases that are to be heard and decided.

About a year ago the Chief Justice's committee began its work under its chairman, Paul A. Freund of the Harvard Law School.

The other members are three law professors, Alexander M. Bickel of Yale, Charles Alan Wright of the University of Texas, and Russell K. Niles of New York University, and three lawyers, Bernard G. Segal of Philadelphia, Robert Stern of Chicago and Peter D. Ehrenhaft of Washington, D.C.

Working under the auspices of the Federal Judicial Center here, the committee held about a dozen meetings and interviewed all nine Supreme Court Justices. Its recommendations, which are scheduled to be transmitted to the Chief Justice in about three weeks, were disclosed by The National Observer in this week's issue.

Details Are Added

Today a knowledgeable source confirmed the report and added the following details of the proposal:

The new court would be composed of judges from the 11 United States Court of Appeals. The judges would be selected from a roster containing all of the appeals court judges except chief judges, semi-retired "senior" judges and judges with less than five years' appellate service.

The selection system would be designed to maintain a balance between experienced and younger judges. No circuit would have more than one representative at a time.

According to one source, the

The Washington Post
Times Herald
The Evening Star (Washington)
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Sunday News (New York)
New York Post
The New York Times
The Daily World
The New Leader
The Wall Street Journal
The National Observer
People's World

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[redacted] can be abolished." Some other observers believe that the shift [redacted] membership on the court should prevent it from developing a permanent ideological cast that might clash with the Supreme Court's philosophy.

End of 3-Judge Courts

At present, cases come to the Supreme Court in two forms: as petitions for certiorari (review), which the Supreme Court has complete discretion to grant or deny, and appeals, which the court is under greater legal obligation to hear.

Under the new proposal, appeals would be abolished. So would three-judge Federal District Courts, which currently hear constitutional challenges to state and Federal laws, and which produce a majority of the appeals that go to the Supreme Court.

A special commission — not a court — would be created to review cases brought by prisoners to challenge either prison conditions or the legality of their convictions.

If either a Federal District Court or a State Supreme Court had denied a prisoner's petition for relief, the new commission would review the case and try to obtain relief, if warranted. Unsatisfied prisoners could still attempt to take their cases to the Supreme Court.

Justice Burger has also appointed a separate panel of experts to work on the problems of the Circuit Courts of Appeals and the District Courts.

After the recommendations are submitted to the Chief Justice, he is expected to submit them to the full Supreme Court. It is unclear how Justice Burger would forward the final report to Congress, since no formal procedure exists for the Supreme Court to tell Congress

[redacted] should be [redacted] Congress [redacted] Court's becoming [redacted] trial. Chief Justice [redacted] Court testified and lobbied in Congress for those changes, but this time the recommendation might simply be [redacted] for Congress's consideration.